Exhibit 8_J

Lehman Brothers office in Hong Kong, another offshore jurisdiction for which the United States imposed a 30% dividend withholding tax rate.

The first of Lehman's stock lending transactions utilizing its Cayman corporation was initiated in 2000. 66 It was implemented with clients in offshore jurisdictions where the withholding tax rate on U.S. stock dividends was 30%. The Lehman Brothers Cayman corporation would borrow stocks from clients in offshore jurisdictions where the withholding tax rate on U.S. stock dividends was 30%. The Cayman corporation would sell the stock to Lehman Brothers Special Financing Inc. (LBSF), a Delaware entity. To hedge itself against the sale of the stocks to LBSF, the Cayman entity would also enter into a LPS with Lehman Brothers Finance Ltd., a Swiss entity. LBSF and LBF also entered into a LPS with each other to hedge their positions. At the end of the loan, the entities would unwind the swaps, the Cayman entity would reacquire the stock from LBSF and return the stock to the client. Other than the clients, all of the other participants in the trade were Lehman Brothers entities.

Stock lending trades involving the second type of Cayman Islands trades were initiated in early 2004.⁶⁷ It was similar to the first trade, but incorporated more third parties into the transactions and reduced the number of the Lehman entities involved. The swap, sale, and repurchase transactions involving the borrowed securities were completed with third parties. A 2005 presentation prepared by Lehman's Equities Finance Group includes two detailed diagrams depicting the Cayman Island trades.⁶⁸ In 2003, Lehman's Cayco stock lending operations produced a profit of \$12 million, and projected doubling those profits in 2004, to \$25 million.⁶⁹

Tax-Driven Transactions. Lehman documents show that it developed and aggressively marketed its dividend enhancement products as a way for offshore hedge funds to dodge payment of the 30% withholding tax on dividends.

A senior Lehman official who headed the firm's Hedge Fund Services group, for example, told an offshore hedge fund client that its CFD product was "a unique and simplified version of a Total Return

⁶⁶ Subcommittee staff interview of Ian Maynard, Lehman Brothers (Apr. 3, 2008).

⁶⁷ Subcommittee staff interview of Bruce Brier, Lehman Brothers (Apr. 8, 2008).

⁶⁸ Lehman Brothers presentation, "EFG US Dividend Exposures" (February 2005), Bates No. LBHIPSI00002533-40, at 2539-40.

⁶⁹ Lehman Brothers presentation, "Equity Finance Yield Enhancement" (undated), Bates No. LBHIPS100174963-69.

Equity Swap that gives [the counterparty] all the economic upside/downside (price movement, dividends and corporate actions) of a security without [the counterparty] having a physical position in that security." He explained: "The CFD is usually used for yield enhancement purposes (in this case [Lehman Brothers] hold[s] the physical in a US entity and receive[s] 100% of the dividend which we pass to you through the CFD, whereas you would only receive 70% if you physically owned the stock in the [hedge fund's] offshore fund)." An employee of another offshore hedge fund that entered into these types of swaps with Lehman, when communicating with his colleagues, put it more succinctly: "[A] ofd is used to circumvent the tax."

On another occasion in August 2004, a member of Lehman's Prime Broker Sales team sent an email to the entire Prime Broker Sales New York group stating: "There have been quite a few questions on our yield enhancement structure so I put together an explanation of the structures. There are two ways to yield enhance equities." The first way is "using [the Lehman] SWAP/CFD product." However:

"[t]he best method to enhance yield is our lending program.

[Lehman] would borrow the securities from the client, then pay them 70% of the dividend and a stock loan fee of 18% of the dividend which would gross them up to 88%. This is the best structure, this is not a sale of the security only a loan so no capital gain or loss issues, no reporting issues."

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In November 2004, one Lehman employee emailed another a spreadsheet that "contains long positions for [an offshore hedge fund], which [Lehman Brothers] currently buy[s] into a swap to enhance [the hedge fund's] yield for dividends." The author asked the recipient to "have a look at the top 5 to see if there is any withholding for a Cayman

⁷⁰ Email from Patrick Ryan, Executive Director, Hedge Fund Services, Lehman Brothers, to James Thalacker, Highbridge Capital Management, LLC., CFD Presentation (July 20, 2004), Bates No. LBHIPS100033324.

⁷¹ Id.

⁷² Email from George Fink to Donna Howe, both of Angelo Gordon, Re: CFDs (Aug. 11, 2004), Bates No. ANG-PSI-0001088 (middle email).

⁷³ Email from John Carriero, Lehman Brothers, to Prime Broker Sales New York distribution list, Lehman Brothers, (no subject) (Aug. 5, 2004), Bates No. LBHIPS100034221.

⁷⁴ Id.

⁷⁵ Id.

⁷⁶ Email from Anthony Demonte; Lehman Brothers, to Elizabeth Black, Lehman Brothers, copying Patrick Ryan and Matt Baldassano, Lehman Brothers, Highbridge LPS Basket (Nov. 22, 2004), Bates No. LBHIPS100036060-61 (original email).

domiciled account."⁷⁷ The request was made because Lehman was "trying to identify trades where it makes sense to leave long positions in [the hedge fund's Lehman Brothers International Europe prime broker] account. Without reducing their yield."⁷⁸

After the email was forwarded to other Lehman employees, a member of the Lehman Hedge Fund Services group wrote the following to a senior member of the Lehman's Yield Enhancement Desk:

"[T]he 4 US securities below pay cash [dividends] but are not subject to withholding since they are classified as hybrid securities (for tax purposes). That would mean a Cayman holder would not suffer 30% withholding and would have no incentive to hold the positions in a synthetic structure. Right now we are holding all of these securities in an LPS [Lehman Portfolio Swap]. ... Based on this information I would like to move the positions back to their PB [prime brokerage] account but wanted to run it by you to see if I am missing something. Would hate to do this and find out down the road that [the hedge fund] owe[s] withholding tax on the dividends."

After it was determined that holding the securities in the LPS offered no withholding tax advantage for the client, the manager approved the move, demonstrating that a critical factor for placing and keeping securities in the LPS was dividend enhancement.

On July 20, 2004, Microsoft Corporation announced that it would issue a \$3 special dividend on December 2, 2004. In response to the Microsoft announcement, a senior member of Lehman Brothers' Equity Finance Products group outlined a campaign for Lehman to sell its "dividend enhancement" products to non-U.S. institutions that wanted to avoid tax withholding on the large dividend:

"The Opportunity: \$10mn P&L on this name this year Microsoft has declared a \$3 dividend payable 2nd December 2004, subject to shareholder approval. . . . Lehman has sourced 10mn shares to date from offshore sources with the

⁷⁷ Id.

⁷⁸ Id. This client review apparently related to an effort by Lehman, whenever possible, to move client securities out of swaps, which placed a demand on Lehman's balance sheet assets, and into the prime brokerage account, where the client would bear the cost of carrying the security.

⁷⁹ Email from Patrick Ryan, Lehman Brothers, to Ian Maynard, Lehman Brothers, FW: Highbridge LPS Basket (Nov. 29, 2004), Bates No. LHBIPS100038360-61 (top email).

intention of using this asset to delta hedge third party swaps activity." 80

The plan was greeted with enthusiasm from other Lehman officials. One of his superiors responded: "This summary is excellent. I am sure we will have a terrific result." Later on, the Equity Finance Products group official reported: "Good progress so far this morning. . . I have interest my side for over 30 [million] shares the cash register is opening!!!!" His boss responded: "Outstanding. We needed a one off like this and hopefully this will meet our expectations. Let's drain every last penny out of this [market] opportunity. Please let me know if I can help in any way."

Shortly thereafter, as work was proceeding on transactions related to the Microsoft special dividend, one Lehman employee sent an email to multiple colleagues entitled "Dividend Strategy" and addressed to "Dear Knights of the Dividend Round Table," leaving little doubt that the motivation of Lehman's Microsoft campaign was to maximize the dividend amounts returned to clients.⁸⁴

Lehman's clients were also very clear that their motive in participating in certain transactions was to avoid withholding taxes. One Lehman employee sent an email to over 30 colleagues describing a meeting with an offshore hedge fund client. He wrote: "re US Business: [the hedge fund's business size is] currently small now though will dramatically increase during the summer of 2004. [I]nterested in [Lehman] product, specifically around grossing up of dividends to 100%."85

³⁰ Email from Ian Maynard, Lehman Brothers, to multiple Lehman colleagues, Microsoft Strategy, (July 22, 2004), Bates No. LBHIPSI00002530-31 (original email).

⁴¹ Email from Jeffrey Dorman, Lehman Brothers, to Ian Maynard, Lehman Brothers, Re: Microsoft Strategy, (July 22, 2004), Bates No. LBHIPSI00002530-31 (second email from bottom).

⁸² Email from Ian Maynard, Lehman Brothers, to Jeffrey Dorman, Lehman Brothers, Re: Microsoft Strategy, (July 22, 2004), Bates No. LBHIPSI00002530-31 (third email from bottom).

⁸³ Email from Jeffrey Dorman, Lehman Brothers, to Jan Maynard, Lehman Brothers, Re: Microsoft Strategy, (July 22, 2004), Bates No. LBHIPS100002530-31 (top email).

⁸⁴ Email from Bruce Brier, Lehman Brothers, to multiple Lehman Brothers colleagues, Dividend Strategy, (July 30, 2004), Bates No. LBHIPSI00002502-03.

^{8.5} Email from Matthew Pinnock, Lehman Brothers, to numerous Lehman Brothers employees, Marshall Wace Asset Management UK - Meeting - EFG Relationship Review and Development Discussion (May 8, 2004), Bates No. LBHIPS100032569-70.

On another occasion, a Lehman employee sent an email to a colleague stating, "we will trade today [Oct. 25, 2004], settle on the 28th Record is the 29th. ... They are absolutely looking for the div. ... fyi, the only reason for [Highbridge, an offshore hedge fund] to swap is for yield enhancement."

Another report noted that the client:

"estimates we won c. 40% of their yield enhancement trades which they do with 3 providers including us. They would prefer to do as much [yield enhancement] business here as possible as the CFD product is much easier than doing total return swaps elsewhere. ... Stressed that during div. season they don't have time to keep bidding back and forth on each position so if we want to guarantee a position we need to show them our best level immediately."

In January 2005, a Lehman employee reported to the head of Capital Markets Prime Services that a hedge fund client owned three dividend paying stocks and "would like to do total return equity swaps on the three positions to mitigate/eliminate the tax withholding." Clearly, eliminating the payment of dividend taxes was a key objective for both Lehman Brothers and its clients.

Marketing. Lehman used dividend enhancement transactions to attract and retain hedge fund clients, often having to match or outperform a competitor. For example, one Lehman employee wrote to three others that:

"Special [Dividend] coming up.... There is a shareholder vote on Oct 6th, the special div record date is not announced at the moment. [Hedge fund client] looking for Yield Enhancement on a large position. ... We need to be as competitive as possible. They are 98 bid away from Lehman, at the very least we need to match."

⁸⁶ Email from Anthony Demonte, Lehman Brothers, to James Metaxas, Lehman Brothers, RE: Trade Confirm (Oct. 25, 2004), Bates No. LBHIPS100110753-56.

⁸⁷ Email from Katie Gillham, Lehman Brothers, to multiple Lehman Brothers colleagues, CQS Management UK - Entertainment - General catch up with their Finance team (July 28, 2004), Bates No. LBHIPS100033591-92.

Email from Jeffrey Seymour, Lehman Brothers, to John Wickham, Lehman Brothers, Total Return Equity Swaps for Fortress Off-Shore Fund (Jan. 19, 2005), Bates No. LBHIPS100001474-76 (original email).

⁸⁹ Email from Anthony Demonte, Lehman Brothers, to Matt Baldassano, Ian Maynard, and Bob Boraczek, all Lehman Brothers, MCIP (Sept. 1, 2005), Bates No. LBHIPSI00131584.

The "98" refers to the percentage of the dividend payment that another financial institution was apparently willing to provide to the offshore hedge fund, instead of the 70% normally available after the 30% withholding tax.

On another occasion, Lehman wrote to an offshore hedge fund investment manager at Maverick Capital, after a meeting in which dividend enhancement transactions had been discussed. In a section of the letter regarding, "Dividend Enhancement Solutions," Lehman wrote: "We have a variety of solutions using swap and securities lending vehicles [to] achieve yield enhancement. We propose Maverick provide us an Interest List on a Weekly basis for possible enhancement trades. ..."

A few years later, Lehman was doing business with the same hedge fund, and a Lehman employee sent an email stating: "I notice that you transfer some of your long position out around their upcoming record dates to [a competitor]. I imagine that is because of the dividend payment. Is there something we can do for you that they are? I'd love to discuss if so." The hedge fund trader responded by asking: "Do you have a dividend enhancement product for long or short US equities in the offshore accounts?" The Lehman employee forwarded the question to a colleague and asked him to call the hedge fund manager "to discuss swaps" and "tell them about doing long swap/cfd business around record date items so that they get enhanced div treatment on us stocks and so they don't have to move them out to [a competitor] as they have been doing."

At other times, rather than Lehman's initiating the discussion, its hedge fund clients pressed Lehman to arrange dividend enhancement transactions for them. For example, in 2005, one hedge fund CEO sent a message to Lehman asking: "[A]ny word where you are with swaps and CFDs? We have some deals that we need to get on to avoid withholding

⁹⁰ Letter from Lehman Brothers to Maverick Capital (April 24, 2001), Bates No. MAV0000794-99.

⁹¹ Email from Christopher Antonelli, Lehman Brothers, to Jim Chen, Maverick Capital Management, Long Transfers (Jan. 30, 2004), Bates No. LBHIPSI00134533-34 (original email).

⁹² Email from Jim Chen, Maverick Capital Management, to Christopher Antonelli, Lehman Brothers, Re: Long Transfers (Jan. 31, 2004), Bates No. LBHIPS100134533-34 (middle email).

⁹³ Email from Christopher Antonelli, Lehman Brothers, to Matt Baldassano, Lehman Brothers, FW: Long Transfers (Feb. 4, 2004), Bates No. LBHIPS100134533 (top email).

on [dividends]."44 A Lehman employee responded: "We are getting close, give me the names you would like to do. I will do my best."95

In 2002, an offshore hedge fund pressed Lehman to provide it with 100% of the dividend amount, instead of the 92% that had been offered. In an email to colleagues, a Lehman employee wrote: "[Angelo Gordon, an offshore hedge fund] called regarding the swaps that [were] discussed on his [preferred shares]. He said he is being quoted by other brokers on the street 100% dividend doing it via a total return swap as opposed to the 92.5% we offered via CFD [a Lehman product]. . . . He wants a call back tomorrow either way so he knows how and with who to proceed."

Risk and Regulatory Concerns. Throughout its promotion of dividend enhancement transactions, internal documents show that Lehman Brothers was aware of the tax risks posed by those transactions, and tried to limit that risk by capping its financial exposure and by adding features to its transactions to disguise their tax avoidance purpose.

In September 2004, for example, a senior Lehman Brothers Equity Finance official took a closer look at the firm's CFD transactions and identified "a number of areas for concern," including Lehman's "tax exposure":

- "The range of clients for whom we are guaranteeing 100% on long dividends has increased significantly recently[.]
- There would not appear to be any consistent requirements around minimum holding periods and churning of positions appears to be reasonably frequent. ...
- The annualised tax capacity numbers are in excess of circa \$15mn whereas a previous limit of \$10mn was recommended for this business. Feel that we need to reduce exposures selectively and certainly cap the tax exposure."

⁹⁴ Bloomberg message between Pat Hess, University Capital Strategies Group, and Anthony Demonte, Lehman Brothers (Mar. 28, 2005), Bates No. LBHIPS100109857.

⁹⁵ Id.

⁹⁶ Email from Steve Trommer, Lehman Brothers, to Alan Pace and Patrick Ryan, Lehman Brothers, Swaps for Angelo Gordon (May 6, 2002), Bates No. LBHIPS100020695-96 (original email).

⁹⁷ Email from Ian Maynard, Lehman Brothers, to multiple Lehman colleagues, LBSF Capacity Using CFDs (Sept. 21, 2004), Bates No. LBHIPSI00018414-16.

A few days later, the Equity Finance official made a number of recommendations to address the identified tax risks. His recommendations included the following:

- "Set a maximum capacity limit within which we as a business will operate. This capacity limit will reflect a maximum WHT [withholding tax] at risk number (the 30% number as the counterparties are largely offshore entities) and will cover both CFD, LPS and single stock swap product. My initial suggestion for Risk Capacity threshold is \$20mn. Given the fact that we are nearing this limit it will not leave us with significant room for expansion.
- ... [M]inimum holding periods of stock to avoid excessive churning of stocks over dividend."⁹⁸

Shortly afterwards, Lehman revised its guidelines for dividend enhancement transactions to stress features that would make it hard to depict them as designed to dodge dividend taxes. A senior vice president in the Equity Finance Group ("EFG") with tax expertise summarized the new guidelines for a colleague in an email:

"To summarize our discussion earlier today,

"First, there is no 'silver bullet' with respect to these issues but rather relative risks that should be priced accordingly. For lack of clarity, similar issues are present whether the transaction is effected as a swap, future, securities loan, or CFD. The guidelines below apply to CFDs, Swaps, and Securities Loans unless otherwise noted:

"1. The longer the better-3 to 6 months are the shortest duration we should consider. One year or greater swaps are preferred. CFDs are perps so this is not an issue. Longer term swaps or perps which are habitually terminated prematurely are suspect. Shorter term security loans are acceptable since this is market practice.

⁹⁸Email from Ian Maynard, Lehman Brothers, to Jeffrey S. Dorman, Lehman Brothers, and Richard Story, Lehman Brothers, RE: LBSF Capacity Using CFDs (Sept. 23, 2004), Bates No. LBHIPS100017487-89. When asked about his concerns and recommendations as expressed in his September emails, Mr. Maynard told the Subcommittee that after conducting a more detailed review of the CFD and other transactions at issue, he believes the comments he made in 2004 were incorrect. Subcommittee interview of Ian Maynard, Lehman Brothers (Apr. 3, 2008 and Aug. 20, 2008)

- "2. Swaps-single equity swaps should be avoided. Baskets should generally exceed 20 referenced assets. Swaps that are liked to distribution transactions can have 10 referenced assets. Risk will be further reduced by including referenced assets that: i. do not pay dividends, ii. are issued by non-US corps, or iii. pay low dividend yields. For this reason, all other things remaining constant, Swaps are lower risk than CFDs.
- "3. General background-offered transaction should be viewed in light of existing customer background including i. current notional balances, ii. trading patterns, iii. composition of referenced assets, iv. ex-dates, etc.
- "4. All transactions have residual risk which should be priced accordingly. By definition, 100% dividend equivalent payments under price the inherent risk.
- "5. The lowest risk transaction is the distribution business. Specifically. In this transaction LBIE borrows or buys vs. swap from an 85% country and loans or sells vs. swap to an 85% country."99

This same EFG vice president also had concerns about the stock lending transactions Lehman was implementing from Hong Kong via the Cayman Islands. In 2003, he explained to the head of Equity Finance for Europe why certain features of the Cayman Trades were necessary to reduce tax risk. For example, in response to a question about whether it was necessary to use a person from the Hong Kong office, as opposed to an office in another jurisdiction with the same tax rate (such as Luxembourg), he answered:

"The reason for the bodies is to thwart any argument that these entities are non-substantive shells. If a tax authority successfully argued this withholding and other taxes could be due. ... Cayco is a division of Hong Kong for US tax (check the box) which is why the body can work in Hong Kong or Cayman." 100

When asked whether the Lehman employee had to be physically present in Hong Kong, he explained: "Maximum reduction in US tax risk if resident in Hong Kong, Moreover, if person stayed in Japan HK

⁹⁹ Email from Bruce Brier, Lehman Brothers, to Alan Pace, and others, Lehman Brothers, Yield Enhancement Guidelines (Nov. 19, 2004), Bates No. LBHIPSI00017490-91.

¹⁰⁰⁰ Email from Bruce Brier, Lehman Brothers, to Richard Story, Lehman Brothers, RE: US Cayman 70% Trade (May 25, 2005), Bates No. LBHIPSI00149673-76.

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entity could be considered to have a Japanese branch." He also explained Lehman's tax risk was reduced by a plan to trade baskets of securities rather than a single type of security, and to include an additional swap in the transaction:

"The safeguard issue is as follows: IRS is [sic] could argue US withholding tax is due either on the in lieu made by Cayco or the swap payment made by LBSF. This safeguard applies to the swap payment. While the general rule is no withholding on swaps the IRS could argue that LBSF is a agent for Cayco and the dividends collected by LBSF are really for Cayco's. (i.e., the swap payment was in fact a dividend payment). One existing safeguard is the use of baskets instead of swaps. In addition to the basket safeguard I proposed having LBSF sell and swap back so that LBSF receives swap payments instead of actual dividends. If the IRS used the agent argument there would be no withholding since Cayco could receive swap payments directly. Unfortunately we have some regulatory issues here I am analyzing."102

In early 2005, the same EFG vice president explained why the second version of the Cayman trade, with more third parties involved in the transaction, reduced Lehman's tax risk:

"It is not the Cayman borrow which makes this the best trade for Lehman risk adjusted it is what Cayman or LBIE does with the shares. That is to say the transfer to an unrelated offshore broker dealer substantially reduces the US withholding tax risk. This process, for lack of a better name, is called 'distribution.'"103

This EFG vice president also expressed concerns about Lehman's single equity swaps, which were finally halted in 2004. He later explained some of the tax risks:

"While single equity swaps do occur in the market most US tax lawyers would say such swaps warrant elevated attention for a few reasons. First, the relevant regulations do not comport particularly well with the single equity model. Second, many finance and legal professionals in the industry

iai Id.

¹⁰² Id.

¹⁰³ Email from Bruce Brier, Lehman Brothers, to Kevin Harrison, Lehman Brothers, RE: Conclusion of US div meeting (Jan. 25, 2005), Bates No. LBHIPS100175106-07 (top email).

believe a single equity swap can be equated to a securities loan. If this were the case, US withholding would likely be imposed on swap payments made from LBIE to hedge funds."104

In addition to advising on the structures of the dividend enhancement transactions to minimize their tax risk, the EFG vice president cautioned colleagues against leaving a paper trail related to the nature and purpose of the transactions being designed and implemented. For example, when discussing the diagram of a Cayco trade sent to him by a colleague, the attorney wrote back: "Personally, I would not prepare anything and leave a trail."105

Risk Limits. In January 2005, Lehman Brothers reorganized its operations and created a Capital Markets Prime Services group, which included the Equity Finance Group. Upon assuming control of the group, the Capital Markets group head initiated a review of the group's services and activities. As part of this review, Lehman's Equities Finance Group prepared a presentation entitled, "EFG US Dividend Exposures."106 One chart in the presentation describing Lehman's "Yield Enhancement US Business" lists "Risk of Re-categorization" as one factor to consider, apparently referring to the risk that a tax authority could recategorize Lehman's swaps as transactions in which the dividend tax should have been withheld and remitted to the IRS. 107

As a result of the review, Lehman decided to limit the use of its CFD swaps to non-U.S. clients and non-U.S. securities; limit the new single equity swap to portfolios of no more than 20 securities; and limit the LPS to baskets of 20 or more stocks, 108 changes apparently intended to reduce the likelihood that the transactions would be noticed and challenged by the authorities.

Because of its recognition of the tax risks associated with its dividend enhancement transactions, Lehman also developed and applied overall monetary risk limits on those trades. These limits imposed a cap

¹⁹⁴ Email from Bruce Brier, Lehman Brothers, to Richard Story, Lehman Brothers, and Peter Sugarman, Lehman Brothers, RE: US Total Return Equity Swaps for Fortress Off-Shore Fund (Jan. 21, 2005), Bates No. LBHIPS100001474-76 (top email).

¹⁰⁵ Email from Bruce Brier, Lehman Brothers, to John Carriero, Lehman Brothers, RE: Cayco (Apr. 7, 2004), Bates No. LBHIPS100040003-04 (top email).

¹⁰⁶ Lehman Brothers presentation, "EFG US Dividend Exposures" (Feb. 2005), Bates No. LBHIPS100002533-40.

¹⁰⁷ Id. at 2538, chart entitled, "Yield Enhancement US Business."

¹⁰⁸Email from Melanie Nunn, Lehman Brothers, to multiple Lehman Brothers colleagues, Urgent - Agenda - Synthetics Meeting Today (May 17, 2005), Bates No. LBHIPS100012121.

on the financial exposure that could be incurred by Lehman from transactions in which dividend amounts were paid and passed onto a client, but no tax was withheld or remitted to the IRS. The purpose was to limit the amount of unpaid dividend taxes that Lehman might be held liable for, as a withholding agent, if the IRS were to invalidate or recategorize its transactions. For example, Lehman set a \$10 million limit on its CFD transaction for 2004, only to discover later that its transactions had exceeded this limit by \$5 million, for a total tax exposure of \$15 million. 109 Lehman set separate limits on its stock loan transactions, and as the transactions became more popular with Lehman's clients, adjusted those limits upward. For example, Lehman established a \$25 million limit on its Cayco trades in 2003, but doubled that limit the next year to \$50 million. 110

Lehman clients also sought to limit their financial exposure by obtaining tax indemnification agreements from Lehman to protect themselves against the imposition of any tax liability associated with Lehman's Cayman stock lending transactions. Lehman agreed to sign a number of indemnity agreements with such clients as Citigroup, Goldman Sachs Europe, JPMorgan Chase, and the Royal Trust Corporation of Canada. 111

These and other documents make it clear that Lehman, as well as its clients, viewed its dividend-related transactions as exposing the firm to possible tax liability. Lehman nevertheless continued to engage in these transactions.

Lost Tax Revenues. The dividend enhancement swap and stock loan transactions implemented by Lehman proved to be very lucrative for its clients, and quite costly for the U.S. Government. While complete data is not available, documents produced to the Subcommittee help illustrate the size of the problem.

In February 2005, as part of an internal review of Lehman "dividend enhancement" products, Lehman's Equities Finance Group prepared a presentation entitled, "EFG US Dividend Exposures." One

¹⁰⁹Email from Ian Maynard, Lehman Brothers, to Jeffrey S. Dorman, Lehman Brothers, and Richard Story, Lehman Brothers (Sept. 21, 2004), Bates No. LBHIPS100018414-16.

¹¹⁰ Lehman Brothers, "Equity Finance Yield Enhancement," (undated), Bates No. LBHIPS100174963-69.

¹¹¹ Subcommittee interview of Lehman Brothers representative (Sept. 8, 2008); see also, e.g., US Equity Lending Annex between Goldman Sachs Europe and Lehman Brothers Equity Finance (Cayman) Ltd. (Oct. 15, 2003), Bates No. GS-PSI-00427-28.

¹¹² Lehman Brothers presentation, "EFG US Dividend Exposures" (Feb. 2005), Bates No. LBHIPS100002533-40.

chart, entitled "2004 Exposures," listed Lehman's five types of dividend-related transactions (single stock swap, LPS, CFD, Cayco I and Cayco II) and, for each, estimated the total amount of dividend payments that had been passed through to clients and the total amount of withholding tax that had not been paid, using a 30% tax rate. 113 The Lehman chart estimates that the single stock swaps generated \$1 million in unpaid dividend taxes; the CFD swaps generated \$24 million; the LPS swaps generated \$15 million; and the Cayco I stock loan transactions generated \$30 million. The Lehman chart indicates that no withholding risk was associated with the Cayco II transactions so that there were no unpaid taxes to report. However, the chart also estimates that Lehman forwarded \$150 million in dividends to clients that year through the Cayco II transactions, which at a 30% rate means that they generated estimated unpaid dividend taxes totaling \$45 million. Altogether then, for the single year of 2004, with respect to the five types of Lehman transactions analyzed in the chart, the amount of dividend taxes that were not withheld and paid to the U.S. Government totaled \$115 million.

Another, more narrow analysis conducted by Lehman Brothers for the years 2004-2005, performed at the request of the IRS, identified a smaller subset of transactions using Lehman's SES, LPS, or CFD swaps, or its Cayman stock loans. 114 The transactions included in this analysis were restricted to those that met the following criteria:

- 1. A Lehman entity acquired a U.S. dividend paying stock directly or indirectly from a foreign counterparty, with settlement occurring between seven days prior to the dividend declaration date and the record date.
- Lehman held the stock over the dividend record date and, after the record date, directly or indirectly sold the U.S. equity back to the foreign party.

Lehman calculated that, with respect to these specific dividend enhancement transactions, it had paid a total of about \$35 million in dividend-based payments to clients and failed to withhold and remit to the IRS at least \$10 million in dividend withholding taxes.

¹¹³ Id. at 2535, chart entitled, "2004 Exposures." When asked about this chart, Lehman indicated that the figures were not based on specific data but consisted of general estimates that could include some transactions that did not involve dividends and could have omitted some transactions that should have been included.

¹¹⁴ Leman Brothers, Information Document Request Response to IDR IE-52 (Oct. 17, 2007), Bates No. LBHIPSI00021476-78.

Whether Lehman's tax exposure in 2004 was \$10 million, as calculated in response to an IRS request, or \$115 million, as estimated in its own internal analysis, it is clear that Lehman knew its dividend enhancement swap and stock loan products were built around enabling its clients to dodge U.S. dividend taxes.

B. Morgan Stanley Case History

1. Background

Morgan Stanley is an international financial services firm, with 600 offices across 33 countries, headquarters in New York City, and international centers in London, Tokyo, and Hong Kong. 115 The company took its current form in 1997 following a merger with Dean Witter and employs about 50,000 employees worldwide. 116 It is organized into three business segments, Asset Management, Institutional Securities, and Global Wealth Management. 117 It conducts its securities transactions primarily through wholly-owned subsidiaries that include Morgan Stanley & Co. Incorporated (MS&Co), a registered U.S. brokerdealer. 118 Through its Institutional Securities segment, Morgan Stanley provides prime brokerage services for offshore hedge funds and other offshore financial institutions. 119 For fiscal year 2007, it reported assets of nearly \$270 billion, and net income of \$3.2 billion. 120 The current Chief Executive Officer and Chairman of the Board of Directors is John J. Mack. 121

2. Dividend Tax Abusive Transactions

From at least 1999 until the present, Morgan Stanley has developed, marketed, and implemented a variety of transactions, using swaps, stock loans, and equity linked certificates, aimed at enabling its non-U.S. clients to dodge U.S. dividend taxes. In September 2005, a Morgan Stanley internal presentation on its "U.S. Equity Swaps Flow Business," estimated that 34%, or a third, of its revenue came from

¹¹⁵ See http://www.morganstanley.com/about/company/index.html.

¹¹⁶ Morgan Stanley, Annual Report on Form 10-K for the Fiscal Year Ended Nov. 30, 2007 at 1 (2008).

¹¹⁷ Id. at 2.

¹¹⁸ Id. at 2 and 9.

¹¹⁹ See id. at 4.

¹²⁰ Id. at S-1 and S-2.

^{121 1}d. at 12.

dividend enhancement transactions. 122 That presentation also indicated that "Dividend Enhancement" swaps alone had brought in over \$25 million in revenue for Morgan Stanley in 2004, and would bring in an estimated \$40 million in 2005. 123

Tax-Driven Transactions. In 1999, an investment advisor to offshore hedge funds prepared an internal memorandum noting: "Morgan Stanley has approached us about entering into stock loan agreements that would minimize the adverse effects of U.S. withholding." In 2001, a Morgan Stanley employee sent a group of colleagues an email entitled, "Trading Idea: Dividend Yield Enhancement Swap for US Stock." It stated: "Non-US investors (resident in Hong Kong, Taiwan, Singapore, Cayman Islands, Jersey etc.) typically suffer withholding tax on US dividends, ranging from 15-30%," and that "[i]nstead of buying/holding the stock directly, clients can enter into a Total Return Equity Swap with Morgan Stanley and achieve yield enhancement." These and other document suggest that, from their inception, Morgan Stanley's swap and stock loan "dividend yield enhancement" products were aimed at enabling non-U.S. clients to dodge U.S. dividend taxes.

These transactions continued over the following years. Documents supplied to the Subcommittee by Citigroup, for example, in connection with its decision, described below, to reimburse the IRS for unpaid dividend taxes on certain stock swap transactions, identified swap transactions between Citigroup and Morgan Stanley over a three-year period, from 2003 to 2005, involving nearly \$16 million in dividend payments and \$2.3 million in unpaid dividend taxes. These figures related to Morgan Stanley's dividend-related swaps with just one counterparty.

¹²² Morgan Stanley Presentation to Global Financing Products Group[:] "U.S. Equity Swaps Flow Business" (Sept. 6, 2005), Bates No. MS-PSI 021298, at 3.

¹²³ Id. at 5. When asked about the basis for these figures, Morgan Stanley told the Subcommittee that the presentation had been compiled by the head of its U.S. swap trading desk using a "back" of the envelope" analysis provided by its equity swaps head about why clients had entered into certain swap transactions. Subcommittee staff interview of Alan Thomas, Morgan Stanley (July 2, 2008).

¹²⁴ Maverick memorandum, Dividend Enhancement Transactions, marked "Draft – As of 4/26/99," prepared by Keith Hennington (Apr. 22, 1999), Bates No. MAV0001082-83, at 1082.

¹²⁵ Email from Tommie Fang, Morgan Stanley, to numerous Morgan Stanley distribution lists and employees, Trading Idea: Dividend Yield Enhancement Swap for US Stock (June 14, 2001), Bates No. MS-PSI* 020758-60 (original email).

^{126 1}

¹²⁷ Citigroup untitled chart prepared for the IRS listing swap transactions from 2003 to 2005 (undated), Bates No. CITI_PSIWHTAX001460. See also discussion of Citigroup case history.

In December 2005, an offshore hedge fund emailed Morgan Stanley's Institutional Equities Division stating that its "Global Financials team are thinking of purchas[ing] a US name which pays a special dividend of \$6 and were wondering if they could potentially swap it out to get a div [dividend] enhancement." The subject line of the email was "Possible Div Enhance Trade." Morgan Stanley's Institutional Equities Division responded that it was willing to do the swap and re-sell the stock to the hedge fund after the dividend was paid. Its email stated that the hedge fund could "[o]pen pos[ition] by trading straight into swap[.] After the div [dividend] ... [Morgan Stanley] can cross the stock to the client[']s [prime brokerage] acc[ount] if they do not want to close out [their position.]",130

2004 Microsoft Dividend. Morgan Stanley's knowing participation in the development, marketing, and implementation of transactions to facilitate nonpayment of U.S. dividend taxes by offshore clients is also illustrated by its response to the Microsoft special dividend. On July 20, 2004, Microsoft Corporation announced a \$3 special dividend to be paid on December 2, using a record date of November 17.131 The day after the announcement, the head of Morgan Stanley's trading desk for equity swaps emailed his colleagues urging them to develop dividend enhancement swaps for the Microsoft dividend. In a "WHY" section, he explained: "Morgan Stanley can enhance the dividend payout [to offshore hedge funds] from 70% to 100% through a total return equity swap." He wrote: "This is a great opportunity to highlight an application that is relevant to all dividendpaying securities (not just MSFT)."132 He noted that, due to U.S. dividend taxes, the "bottom line" was that "[t]he incremental cost of having a swap versus owning MSFT is either zero or minimal depending on the client's situation."133

¹²⁸ Email from Justine Ayling, Landsdowne Partners Limited, to Declan Ryan, Morgan Stanley, Possible Div Enhance Trade (Dec. 14, 2005), Bates No. MS-PSI* 020744-46 (original email).

¹³⁰ Email from Chirag Patel, Morgan Stanley, to the swap distribution list, copying the "fpgswap" distribution list, Morgan Stanley, RE: Possible Div Enhance Trade (Dec. 14, 2005). Bates No. MS-PSI* 020744-46 (second email from top). While this email clearly shows Morgan Stanley's knowledge of its client's motivation for utilizing a swap transaction, Morgan Stanley and the client did not cross shares on either end of the transaction they entered into.

¹³¹ Microsoft Corp., "Microsoft Outlines Quarterly Dividend, Four-Year Stock Buyback Plan, And Special Dividend to Shareholders," (July 20, 2004), available at http://www.microsoft.com/presspass/press/2004/jul04/07-20boardPR.mspx.

¹³² Email from Alan Thomas, Morgan Stanley, to multiple Morgan Stanley distribution lists and individuals, MSFT Total Return Swaps - FOR INTERNAL DISTRIBUTION (July 21, 2004). Bates No. MS-PSI 000798-800.

¹³³ Id.

The head of Morgan Stanley's equity swaps group urged early action on the swaps, because while the record date for the Microsoft dividend was November 17, transactions involving Microsoft stock had to be completed by November 12, to ensure that each transaction cleared the standard three business day settlement period for the purchase or sale of securities. ¹³⁴ The following day, a senior member of Morgan Stanley's equity trading division sent an email entitled, "MSFT div timing," urging even quicker action due to tax considerations:

"Please note:

"This trade is more urgent than people are assuming. It should be traded NOW. Here's why:

"Although the special is slated for November, we do NOT want to put on trades close to record date. Tax risk increases dramatically.

"The trade should be put on well in advance of the record date.

"There is also a regular dividend in August, which presents a perfect opportunity to get positioned in advance of the special.

"Furthermore, we don't want to trade on top of that record date, either.

Bottom line, this is CURRENT BUSINESS, over the next 2-3 weeks. Please do not let clients become complacent.

".... We have first mover advantage and need to close." 135

This email shows that Morgan Stanley was aware of the "tax risk" associated with its dividend-related transactions, and sought to avoid that tax risk by arranging swap trades that were not closely associated in time with the November record date for Microsoft's special dividend or its regular dividend payment date in August. By changing the timing, so that the swaps were not near in time to the dividend distributions, the Morgan Stanley employee apparently thought the firm could disguise the tax-driven nature of the swaps.

¹³⁴ See id.

¹³⁵ Email from Jeffrey Penney, Morgan Stanley, to multiple Morgan Stanley distribution lists and individuals, MSFT div timing (July 22, 2004), Bates No. MS-PSI* 020727.

On July 26, 2004, six days after the Microsoft announcement, Morgan Stanley circulated a document internally identifying "2 different trades that will allow a client to enhance the yield of their [Microsoft dividend to 2 different levels depending on their sophistication/risk appetite."136 Both trades were flexibly designed to incorporate a variety of financial instruments such as swaps, certificates, single stock futures, and options. 137

The first transaction, deemed the "US Trade," allegedly provided Morgan Stanley clients with 100% of the Microsoft dividend, but cost between 20 and 50 basis points for financing and a \$0.05 commission, which was characterized as "negotiable." The document estimated that the two costs "will normally amount to about 5% of dividend," so the client would end up with 95% of the dividend amount. 139 The U.S. Trade transaction was described as follows: "Client Sells shares to Morgan Stanley. Morgan Stanley sells a derivative to the client. Enhancement is passed back through the derivative. In order to receive 100% of dividend, on unwind, Morgan Stanley must sell stock back to market (not the client) and close out the derivative. 2140

The second Morgan Stanley transaction, called the "European Trade," allegedly provided clients in a 70% jurisdiction, such as the Cayman Islands or Jersey, with 89% of the dividend amount, while clients in an 85% jurisdiction, such as the United Kingdom, were told they could obtain 92% of the dividend amount. The European Trade transaction was described as follows: "Client sells shares (through a broker) to Morgan Stanley. Morgan Stanley sells a derivative to the client. Enhancement is passed back through the derivative. On unwind the reverse occurs. Alternatively, the shares are simply lent to Morgan Stanley."141

The transactions designed by Morgan Stanley had no purpose other than to enable clients to dodge the U.S. taxes that would otherwise be withheld from the Microsoft dividend. Morgan Stanley actively pushed the transactions, reminding one offshore hedge fund, for example, about the need to execute a swap related to Microsoft stock: "Still plenty of

¹³⁶ Morgan Stanley presentation, "Microsoft Yield Enhancement" at 2 (July 26, 2004), Bates No. MS-PSI 020293-96.

¹³⁷ See id. at 3 and 4.

¹³⁸ See id. at 3.

¹³⁹ Id.

¹⁴⁰ Id. (emphasis omitted).

¹⁴¹ Id. at 4. Morgan Stanley ultimately did not offer the "European Trade."

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time, but I believe you had wanted me to contact you regarding MSFT div enhancement this week. We are ready when you are."142 The hedge fund responded: "Yes ... assuming we are in the swap for 30+ days prior to record date, I assume we could unwind the swap at any time subsequent to record date, correct?" As indicated earlier, these swaps contributed to the \$25 million in revenues that Morgan Stanley reported receiving from dividend enhancement swaps in 2004.

Equity Linked Certificates. In addition to equity swaps, Morgan Stanley marketed and employed another financial instrument - an equity linked certificate - to assist clients in avoiding the withholding tax on the 2004 Microsoft dividend.

An equity linked certificate is a security which references one or more stocks as the source for determining the certificate's value. The buyer typically purchases the certificate, whose price is determined in relation to one or more specified stocks on a specified date. In the Morgan Stanley certificates, buyers also received payments equal to any dividends paid on the referenced stock during the term of the certificate. Morgan Stanley also allowed the buyers to redeem the value of the certificate at or before its maturity date.

In early November 2004, Morgan Stanley's Jersey and Netherland subsidiaries issued 30 million certificates linked to Microsoft stock. The Jersey subsidiary issued 1 million certificates, while the Netherlands subsidiary issued 29 million. Morgan Stanley told the Subcommittee that its Microsoft certificate represented one of the two times when it has issued a certificate based upon a single U.S. stock. The certificate's maturity date was October 15, 2005, but purchasers were allowed to redeem the certificates before then. The payment at the maturity date consisted of three parts: the closing price of one share of Microsoft; the "Net Yield" which equaled 85% of the dividends paid on one share of Microsoft over the term of the certificate; and the "Outperformance" which equaled 6.99% of the dividends. Apparently, the "Outperformance" reflected the amount of "dividend enhancement" recovered through the transaction, and resulted in the purchasers receiving about 92% of the dividend amount.

Morgan Stanley's UK broker-dealer helped buy and sell the certificates, many of which were cashed in before the maturity date. About 12.4 million shares were sold out of the Netherlands and about

¹⁴² Email from Alan Thomas, Morgan Stanley, to Steve Maresco, Eminence Capital, MSFT (Oct. 8, 2004). Bates No. MS-PSI 001402 (original email).

¹⁴³ Email from Steve Maresco, Eminence Capital, to Alan Thomas, Morgan Stanley, RE: MSFT (Oct. 8, 2004), Bates No. MS-PSI 001402 (top email).

513,000 were sold out of Jersey. According to Morgan Stanley representatives, many of the purchasers of the certificates sold physical shares of Microsoft stock and used the funds to purchase the certificates. It calculated that, in all but one instance, the amount of Microsoft shares bought or sold by Morgan Stanley on behalf of the certificate purchasers was equal to the number of certificates purchased. To hedge its own exposure to the certificates, Morgan Stanley decided not to acquire any Microsoft stock, but to use derivative transactions, apparently to ensure that the transactions would not be characterized and taxed as a stock repurchase or stock loan transaction.

The fact that most of the purchasers of the certificates switched from physical shares to Microsoft certificates, however, and held on to the certificates for only a short time surrounding the dividend payment period, strongly suggests that they were purchasing the certificates to escape payment of the withholding tax that would have applied to their physical shares.

Abusive Stock Loans. In addition to swaps and the Microsoft equity linked certificates, Morgan Stanley has used stock loan transactions since at least 1999, to enable its clients to dodge U.S. dividend taxes. These abusive stock loan transactions were conducted using a Cayman Islands "branch," MSDW Equity Finance Services I (Cayman) Limited, commonly referred to as "MS Cayman" or "Cayco," 144 Cayco, which is still in existence today, has no full time employees or any employees in the Cayman Islands at all. 145 As explained in its "Outline operating procedures," "Cayco is a thinly capitalised company and cannot absorb losses."146 Further, "Cayco should never hold long stock positions" overnight. Yet, this entity borrowed enough securities to pay out over \$1.1 billion in net dividends to clients between 2000 and 2007. 47 Among the top five clients were JPMorgan Chase Bank, which placed orders on behalf of multiple persons and received over \$121 million in dividend payments; Goldman Sachs Europe, which placed orders on behalf of Goldman Sachs US Core Equity Portfolio and received over \$73 million in dividend payments; and Blackrock Investment Management (UK) Ltd. which

¹⁴⁴ See Morgan Stanley diagram, "Yield Enhancement Transactions, Stock Loan of Fully Paid for U.S Securities By MS Cayman" (undated), Bates No. MS-PSI 020945.

¹⁴⁵ Subcommittee staff interview of Matthew Berke, Morgan Stanley (Aug. 21, 2008).

¹⁴⁶ MSDW Equity Finance Services I (Cayman) Limited ("Cayco") Outline operating procedures (undated), Bates No. MS-PSI 020270.

¹⁴⁷ Morgan Stanley, "MSDW Equity Finance Services I (Cayman) Ltd. - Stock Borrowing Transactions (2000-2007)," Bates. No. MS-PSI 019326-34.

placed orders on behalf of Merrill Lynch International Investment Funds and received \$55 million in dividend funds. 148

Morgan Stanley clearly pitched its Cayman stock loan transactions as a way for its clients to dodge U.S. dividend taxes. For example, a 1999 internal memorandum prepared by the Director of Tax of Maverick Capital, an investment advisor for several offshore hedge funds, reports the following:

"Maverick is the advisor for several offshore funds that are having taxes withheld on dividends received from United States companies. Morgan Stanley has approached us about entering into stock loan agreements that would minimize the adverse effects of U.S. withholding. ... Our Cayman Islands funds would enter into a stock loan on each U.S. security that is scheduled to pay a dividend. We would loan the security to a Cayman Morgan Stanley entity. They would pay us an amount equal to 70% of the dividend paid on that security (dividend entitlement). They would also pay us a stock loan fee equal to 13% of the dividend. . . . The end result would be that we would receive 83% of the dividend instead of the normal 70%, ... Morgan is relying on Notice 97-66 to avoid withholding on the dividend entitlement."149

Maverick's Tax Director then compared the proposed stock loan transaction against the use of swaps to dodge payment of U.S. dividend taxes:

"I will get several quotes on the cost of entering into swaps. I have talked to Paine Webber and Deutsche Bank. They are estimating that we would receive approximately 93% of dividends after expenses of the swap. . . . It sounded like the swaps would be much more difficult to manage and we would lose some of the flexibility we would have with the stock loan transaction. I plan to focus on the stock loan transaction unless we feel there is too much tax exposure. 1,150

Seven years later, in December 2006, a Maverick document discussing "Dividend Enhancement Transactions" and focusing in particular on stock loans noted that "Maverick began using the dividend enhancement transaction in 1999. During that time, Maverick has done

¹⁴⁸ Letter from Morgan Stanley's legal counsel (Mar. 14, 2008), at 3.

¹⁴⁹ Maverick memorandum, Dividend Enhancement Transactions, marked "Draft - As of 4/26/99," prepared by Keith Hennington (Apr. 22, 1999), Bates No. MAV0001082-83, at 1082.

¹⁵⁰ Id. at 1083.

this transaction with Morgan Stanley, UBS, Lehman, Merrill Lynch, and ING." 151

In 2004, Morgan Stanley pitched its Cayman stock loan transactions to another client by providing "an outline of the key points regarding a stock lending transaction as a way to increase the yield" on an equity. Morgan Stanley explained that the transaction "would lend your shares to Morgan Stanley for a period to be decided (typically a month)" and:

"[a]t maturity of the stock lending period, Morgan Stanley would pay you: 1) a manufactured dividend equal to the dividends paid outr [sic] during the period net of the withholding tax that you normally incur ie 85% of gross dividends [and] 2) a stock lending fee equal to 6% of the gross dividends paid during the period[.]" 153

On still another occasion, a member of Morgan Stanley's Equity Financing Services emailed a colleague in the Institutional Equities Division following a discussion of securities lending agreements, because a "[c]lient just called looking to trade some US names that are nearer record date." Later in the day, the same Morgan Stanley employee emailed six of his colleagues stating that he "would like to provide [the client] with some color [because] he's looking for US enhancements on his longs on MO (ex 3/11) and WWVY (ex 3/16)." 155

Clearly, both Morgan Stanley employees and their clients saw its Cayman stock loan transactions as providing a way to dodge U.S. dividend taxes.

Restrictions. Aware of the tax risks associated with its dividendrelated transactions, Morgan Stanley has taken a number of steps to limit its exposure.

Since at least 1994, for example, Morgan Stanley has not allowed its clients to both initiate a swap transaction by selling shares to Morgan

¹⁵¹ Maverick memorandum, Description of Dividend Enhancement Transactions (Dec. 12, 2006), Bates No. MAV0001071-72.

¹⁵² Email from Morgan Stanley to Eiger Capital, Stock Lending (Dec. 13, 2004), Bates No. MS-PSI 020249.

¹⁵³ Id.

¹⁵⁴ Email from Sean Rivera, Morgan Stanley, to Dennis De Coninck and Eric Groom, copying Ross McDougall, all Morgan Stanley, RE: Levin Cayman osla (Mar. 1, 2005), Bates No. MS-PSI 001478-80 (fifth email).

¹⁵⁵ Email from Sean Rivera, Morgan Stanley, to multiple Morgan Stanley recipients, RE: Levin Cayman osla (Mar. 1, 2005), Bates No. MS-PSI 001478-80 (eighth email).

Stanley (cross-in) and then repurchase those shares from the firm at the conclusion of the swap (cross-out), in an effort to ensure that its swaps are not recharacterized as a stock loan or stock repurchase subject to dividend taxes. 156 In 2005, Morgan Stanley went further and prohibited its swap clients from engaging in either the initial stock sale or the subsequent stock purchase with the firm. 157 After this policy was adopted, new clients were not allowed to sell their stock to the firm at the beginning of a swap, but existing clients were "grandfathered" and some were permitted to engage in this practice though 2007. 158 In October 2006, Morgan Stanley's Equity Risk Management group took another significant step by deciding to stop offering its Cayman stock loan transactions directly to hedge fund clients. 159 Morgan Stanley told the Subcommittee that this step was taken due to a concern over its ability to maintain adequate control over the business, 160

These steps suggest that Morgan Stanley has cut back, but has not exited the dividend enhancement business. It remains among the largest financial institutions in the world, for example, in the stock lending business. One of its key activities is to borrow U.S. securities from custodian banks and other entities with large supplies of securities in 30% withholding tax jurisdictions and then lend those securities to other non-U.S. financial institutions such as ABN Amro Asian Financial Services Limited, Bank of Nova Scotia Asia Limited, Fortis Global Arbitrage (Asia) Limited, Hong Kong Shanghai Banking Corporation Limited, ING Middenbank Curacao NV, Macquarie Asia Limited, and Nomura International (Hong Kong) Limited. 161 By playing this intermediary role, Morgan Stanley may not be directly arranging dividend enhancement transactions, but it may be a key facilitator of dividend tax dodging arranged by its counterparties.

Lost Tax Revenue, Like Lehman Brothers, Morgan Stanley provided the Subcommittee with information indicating that its dividend enhancement products led to the loss of significant tax revenues for the U.S. Treasury. For example, Morgan Stanley spreadsheets related to its

¹⁵⁶ Subcommittee staff interview, Matthew Berke, Morgan Stanley (Aug. 21, 2008). Morgan Stanley made an exception to this policy if it was covering a short position.

¹³⁷ Subcommittee staff interview of Alan Thomas, Morgan Stanley (July 2, 2008).

¹⁵⁹ See email from Manish Vekaria, Morgan Stanley, to multiple Morgan Stanley distribution lists and employees, PB and IPB US Borrows (Oct. 25, 2006), Bates No. MS-PSI* 020680 (original email).

¹⁶⁰ Subcommittee staff interview, Matthew Berke, Morgan Stanley (Aug. 21, 2008).

¹⁶¹ Morgan Stanley, "MSDW Equity Finance Services I (Cayman) Ltd. - Stock On-Lending Transactions (2000-2007)," Bates No. MS-PSI 019335.

Cayman stock loan transactions indicate that, over a seven-year period, from 2000 to 2007, its Cayman shell corporation paid out substitute dividends to clients in excess of \$1.1 billion. Leaving a 30% dividend tax rate indicates that those transactions cost the U.S. treasury about \$300 million in unpaid dividend taxes.

Morgan Stanley also identified the top five recipients of the \$1.1 billion in substitute dividends paid by its Cayman corporation. The data shows that those top five recipients obtained over one-third of the total, about \$370 million, and escaped paying about \$110 million in dividend taxes. ¹⁶³

In addition to its stock loan transactions, Morgan Stanley enabled its clients to dodge U.S. dividend taxes applicable to the 2004 Microsoft dividend. As indicated earlier, Morgan Stanley sold about 13 million Morgan Stanley certificates to clients, provided about \$39 million in dividend-related payments to the certificate holders, and, assuming application of the 30% dividend tax rate, denied the U.S. treasury about \$12 million in 2004.

Morgan Stanley also helped its clients dodge U.S. taxes on the Microsoft dividend through the use of swaps, as it did with respect to many other dividend-paying U.S. securities. Morgan Stanley provided spreadsheets on these swap transactions as well. An analysis of the transactions identified numerous red flags, but the Subcommittee was unable to determine how many had been undertaken for dividend enhancement purposes. Even without this swaps data, the evidence provided to the Subcommittee indicates that, over the seven-year period, from 2000 to 2007, Morgan Stanley's dividend tax transactions enabled its clients to escape U.S. dividend taxes in excess of \$300 million.

C. Deutsche Bank Case History

1. Background

Deutsche Bank AG is a large global investment bank with 1,889 branches in 76 countries, 164 that generated over \$9.5 billion in income in

¹⁶² Morgan Stanley, "MSDW Equity Finance Services I (Cayman) Ltd. - Stock Borrowing Transactions (2000-2007)," Bates. No. MS-PSI 019326-34.

¹⁶³ Letter from Morgan Stanley's legal counsel (Mar. 14, 2008), at 3. In the same letter, Morgan Stanley disclosed that its UK subsidiary, Morgan Stanley & Co. International, which also engaged in stock lending transactions, had also paid dividends to clients, and the top five recipients over the same seven-year period, 2000-2007, had received in excess of \$390 million. Applying a 15% tax dividend rate indicates that Morgan Stanley enabled those clients to dodge payment of nearly \$60 million in dividend taxes. Id.

¹⁶⁴ Deutsche Bank AG, Annual Report on Form 20-F/A for the Fiscal Year Ended Dec. 31, 2007 at 17 (2008).

2007 with total assets of nearly \$3 trillion. 165 Founded in 1870, the bank employs more than 80,000 people worldwide and operates three major divisions: The Corporate and Investment Bank, Private Clients and Asset Management, and Corporate Investments. 166 Deutsche Bank conducts securities transactions through its Global Prime Broker service within its Global Markets Division; U.S. securities transactions are conducted primarily by Deutsche Bank Securities Inc., a U.S. securities broker-dealer registered with the SEC. 167 The Chairman of Deutsche Bank's Management Board and Group Executive Committee is Dr. Josef Ackermann. 168

2. Dividend Tax Abusive Transactions

Beginning in the 1990s and continuing to the present, Deutsche Bank has developed, marketed, and implemented a variety of abusive dividend tax transactions, utilizing swaps and stock loans, to enable its non-U.S. clients to dodge payment of U.S. taxes on U.S. stock dividends. Since 2004, it has conducted most of its abusive stock loan transactions through a tax haven affiliate, Deutsche Bank Investment Limited, located in the Isle of Jersey. In 2007 alone, Deutsche Bank Investment Limited engaged in stock lending transactions involving U.S. dividend paying securities with a notional value of over \$30 billion. 169

Tax-Driven Transactions. An internal memorandum from Deutsche Bank's tax department estimated that, by 2002, the bank was conducting millions of dollars in swap transactions that permitted its clients to dodge payment of U.S. dividend taxes. The memorandum states:

"An estimate of average annual notional on U.S. equity swaps for all clients for 2001 was \$2.8billion, with approximately \$2billion in notional with foreign persons (non-U.S.).... Based on an estimated annual dividend yield of 2.6%, U.S. withholding tax at the maximum rate of 30% on all manufactured dividends paid through swaps to foreign persons for this period, would be approximately \$12.6 million." ¹⁷⁰

¹⁶⁵ See id, at 17.

¹⁶⁶ Id. at 17

¹⁶⁷ Id. at 52

¹⁶⁸ ld. at 95

¹⁶⁹ Letter from counsel to Deutsche Bank to Subcommittee (Mar. 6, 2008).

¹⁷⁰ Deutsche Bank memorandum from Jules Goodman and Adrienne S, Browning of DB Americas Tax Department, to Jim Rowen and Julian Sale, Swap Tax Policy (Nov. 12, 2002), Bates No. DB-PSI 00000043-46.

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The purpose of the memorandum appears to have been to allow the Deutsche Bank tax department to suggest additional ways for the bank to "reduce its US withholding tax risk" by changing its "swap tax policy.**171 The memorandum states:

"The stated policy of the structured finance business in New York is that DB [Deutsche Bank] will not execute swaps around dividend dates. The policy has been to require clients to hold swap positions for a minimum of 30 days. We cannot force clients to maintain the positions for this period, but strongly discourage early terminations. ...

"The DB Americas Tax Department would like the structured finance business to continue to reduce its US withholding tax risk by increasing, as quickly and to the extent possible, the percentage of market executions around swap trading in US equities with foreign clients. In this regard, it is preferable to execute trades in the market both in and out of the swap. ...

"The policy of trading for a minimum term should be modified to require a 45-day minimum term, increased from 30 days. The 45 day term, while not mandated by any statute or regulation relating to swaps, conforms to the period of time the IRS believes is necessary to hold foreign stock for foreign tax credit capture, and may provide an analogy for this business as well."172

The memorandum shows Deutsche Bank tax lawyers suggesting two strategies to reduce the bank's "US withholding tax risk:" imposing longer minimum time frames for U.S. equity swaps, and instituting a general practice of trading related U.S. stock in the market place rather than allowing a client to sell the stock to or buy it back from the bank itself.

Deutsche Bank eventually adopted these recommendations only in part. By 2008, for example, its policy was still to "require" a 30-day minimum term, but "encourage" a 45-day holding period. 173 At the same time, it authorized the head of its synthetic trading desk to permit swap terminations prior to the 30-day "minimum," if related to a "market event."174 Deutsche Bank also expressly prohibited swap transactions within seven days of an ex-dividend date. 175 With respect

¹⁷⁾ Id.

¹⁷² Id.

¹⁷³ Subcommittee staff interview of Andrea Leung, Deutsche Bank (Feb. 7, 2008).

¹⁷⁴ Id.

¹⁷⁵ Id.

to market executions, by 2008, Deutsche Bank permitted swap clients to trade their physical shares directly with the bank at only one end of a transaction – either at the beginning or the conclusion of the swap. 176 Deutsche Bank also, however, permitted clients to sell their shares to the Bank, enter into a swap transaction using the purchasing price, and then exit the swap within a few weeks at an "objective" price, such as the "Market on Close" price, which is the price of the stock at the end of the trading day. Using Market on Close pricing means that a client is able to exit the swap with Deutsche Bank and reacquire shares in the same security at the same price from another broker with virtually no market risk. These practices suggest that Deutsche Bank remained interested in helping its clients regain their stock holdings with little market risk after conducting a swap transaction with the bank to avoid paying dividend taxes.

Other documents, including Deutsche Bank emails, show that Deutsche Bank personnel were well aware that their swap and stock loan transactions were used by clients to dodge U.S. dividend taxes. In 1999, for example, an offshore hedge fund employee wrote a memorandum on discussions he had held with several financial institutions on "Dividend Enhancement Transactions," and indicated that Deutsche Bank would be sending him a price quote on the cost of entering into swaps, and was "estimating that we would receive approximately 93% of the dividends after expenses of the swap."177 In 2004, in an email discussing Microsoft's upcoming special dividend, a Deutsche Bank employee wrote: "We are in the process of determining hedge fund demand for 'All In' enhancement to clients. ... We'll be hopefully sitting down as a group in the next week to outline our plan of action on 70% dividend liability underlying,"178 On another occasion, a 2006 email sent by the director of Deutsche Bank's Global Prime Services group in New York to the investment professionals with Goldman Sachs offshore hedge funds stated: "Are you all available next Tuesday 2/28 at 1 PM for a meeting to discuss securities lending in detail? Specifically: - Yield Enhancement. ... "179

¹⁷⁶ Id

¹⁷⁷ Maverick memorandum, Dividend Enhancement Transactions, marked "Draft – As of 4/26/99," prepared by Keith Hennington (Apr. 22, 1999), Bates No. MAV0001082-83.

¹⁷⁸ Email from Paul Busby, Deutsche Bank, to multiple Deutsche Bank colleagues, Re: Extraordinary Dividend Rules and Microsoft One-Time Dividend (Sept. 16, 2004), Bates No. DB-PSI 00000084-85.

¹⁷⁹ Email from Scott Carter, Director of Global Prime Services at Deutsche Bank Securities, Inc. in New York, to Gary Chropuvka, Arlen Khodadadi, and Karl Wianecki, all of Goldman Sachs Asset Management, Meeting with Deutsche Bank (Feb. 23, 2006), Bates No. GS-PSI-05735.

A February 2007 communication between two Deutsche Bank traders shows how familiar each was with dividend-related transactions. One of the traders asked: "[M]ate - can you use NVS US for div [dividend]?"; the other responded: "[Y]ep we can use it - do you need dates?"180 A March 2007 discussion between two Deutsche Bank traders was even more explicit. 181 The first trader asked:

"Hi Martin - I understand you spoke to Shane last week about some US stocks - MO and RAI - related to dividends. . . . [D]o you want to trade 1,908,100 shares of MO US and 150,000 shares of RAI? We can give you 97.5% of the dividends on those names[.]"

His counterpart then agreed to the trades. Still another email observed: "us mkt for div is traded out of London," referring to Deutsche Bank's London branch. 182

Jersey Stock Loans, Beginning in 2004, Deutsche Bank International Limited (DBIL), located on Jersey in the Channel Islands, began arranging offshore stock loan transactions involving U.S. dividend-paying stocks. According to an internal Deutsche Bank application seeking approval to develop, market, and implement those stock loan transactions. 183 DBIL entered the business because Deutsche Bank needed to interpose a "non-U.S. treaty entity" in its stock loan transactions to avoid dividend withholding and lower its stock loan pricing to match its competitors:

"Broadly speaking, there are substantial US equities held offshore which are consistently included in basket pricing (baskets that would be borrowed on an exclusive basis for use within the overall equities business). We are currently not competitive in that pricing as any borrow of those US equities requires a deduction and payment of withholding tax on substitute payments equal to 15% of any dividend. 184 Our competitors do not have to account for this tax (given some of their offshore structures) and can therefore offer a more aggressive price to lenders. A non-US treaty is attractive as

¹⁸⁰ Bloomberg messages between Ben Davies to Chiraag Shah, both of Deutsche Bank London (Feb. 12, 2007), Bates No. DB-PSI 00001470.

¹⁸¹ Bloomberg messages between Chiraag Shah and Martin Cornell, both of Deutsche Bank London (Mar. 12, 2007), Bates No. DB-PSI 00002358.

¹⁸² Email from Simon Pearson to Adrian Todd, both of Deutsche Bank, Re: Travel Dates (Mar. 12, 2007), Bates No. DB-PSI 00007343.

¹⁸³ Deutsche Bank, New Product Application (Mar. 15, 2004), Bates No. DB-PSI 00000047-71.

¹⁸¹ Deutsche Bank's London branch is subject to a 15% dividend tax rate because the United Kingdom has negotiated a 15% dividend tax rate with the United States.

the amount of withholding tax required to be deducted is reduced to 0% (providing certain criteria are met), therefore allowing us to be more competitive with our pricing.³¹⁸⁵

This document shows that, from its inception, the Jersey stock loans were tax-driven transactions.

The 2004 application, as well as a revised 2005 application, include charts and explanations of the stock loan transactions DBIL planned to offer. ¹⁸⁶ Essentially, DBIL proposed and later carried out transactions in which it borrowed a basket of U.S. securities from a non-U.S. client, sold that basket to the market, and entered into a derivative with Deutsche Bank London's branch to hedge itself against any market risk. ¹⁸⁷ The insertion of the Jersey entity into the proposed transactions was arranged solely for the purpose of invoking IRS Notice 97-66 and enabling Deutsche clients to dodge their U.S. dividend tax obligations.

In 2008, Deutsche Bank indicated that "approximately 98% of the loans transacted through the Deutsche Bank Jersey entity, Deutsche Bank Investment [sic] Limited ('DBIL'), involve U.S. dividend-paying securities." It reported that, in 2007 alone, DBIL engaged in stock lending transactions involving U.S. dividend paying securities with a notional value of over \$30 billion. BBIL's major clients included Pioneer Fund, BGI, Merrill Lynch International Investment Fund, and AIG Global Funds, each of whom may have been trading on behalf of other non-U.S. stockholders.

Lost Tax Revenues. The documents produced to the Subcommittee did not contain data indicating the total volume of dividend-related swap transactions engaged in by Deutsche Bank over the years or the total amount of dividend taxes that were not paid to the U.S. Government as a result of its transactions. The evidence does suggest, however, that Deutsche Bank has participated in transactions involving tens of millions of dollars in unpaid dividend taxes. In a document cited earlier, for example, the Deutsche Bank tax department

¹⁸⁵ Deutsche Bank, New Product Application (Mar. 15, 2004), Bates No. DB-PSI 00000047-71, at 52.

¹⁸⁶ Id.; Deutsche Bank, New Product Application (Jan. 27, 2005), Bates No. DB-PSI 00007472-78.

¹⁸⁷ See id.

¹⁸⁸ Letter from Deutsche Bank legal counsel to the Subcommittee (Mar. 6, 2008), at 2.

¹⁸⁹ Id

¹⁹⁰ See Deutsche Bank, DBIL Stock Lending Transaction Information, Bates DB-PSI 00000499; Letter from Deutsche Bank legal counsel to Subcommittee (June 12, 2008).

estimated that seven years ago, in 2001, Deutsche Bank handled U.S. equity swaps with non-U.S. persons that may have generated unpaid dividend taxes totaling about \$12 million. 191 In documents supplied to the Subcommittee by Citigroup in connection with its decision, described below, to reimburse the IRS for unpaid dividend taxes on a limited number of swap transactions, data shows that Citigroup entered into swap transactions with Deutsche Bank, from 2003 to 2005, involving over \$20 million in dividend related payments and \$3.1 million in unpaid dividend taxes. 192 Those figures cover Deutsche Bank's swaps with just one counterparty. At the least, these documents show that Deutsche Bank structured transactions that enabled its clients to dodge payment of tens of millions of dollars in U.S. dividend taxes.

D. UBS Case History

1. Background

UBS AG is one of the largest financial institutions in the world, with over 2.2 trillion Swiss francs, approximately \$2 trillion U.S. dollars, in total assets. 193 UBS is headquartered in Switzerland, operates in 50 countries 194 with more than 80,000 employees, 195 and maintains a large banking and securities presence in the United States. UBS AG is the parent company of the UBS Group which is organized into four major divisions, the Investment Bank, Global Asset Management, Global Wealth Management and Business Banking, and the Corporate Center. 196 In 2007, UBS reported a net loss of 5.247 billion Swiss francs, or approximately \$4.7 billion U.S. dollars. 197 The current UBS Chairman of the Board is Marcel Ospel, and its Chief Executive Officer is Marcel Rohner. 198

¹⁹¹ Bloomberg messages between Chiraag Shah and Martin Cornell, both of Deutsche Bank London (Mar. 12, 2007), Bates No. DB-PSI 00002358.

¹⁹² Citigroup untitled chart prepared for the IRS listing swap transactions from 2003 to 2005 (undated), Bates No. CITI_PSIWHTAX001460. See also discussion of Citigroup case history.

¹⁹³ UBS AG, Annual Report on Form 20-F/A for the Fiscal Year Ended Dec. 31, 2007 (2008) at 41.

¹⁹⁴ Id. at 23.

¹⁹⁵ See id. at 58.

¹⁹⁶ Id. at 10.

¹⁹⁷ Id. at 3.

¹⁹⁸ Id. at 5.

2. Dividend Tax Abusive Transactions

From at least 2000 until 2007, UBS engaged in abusive dividend tax transactions, marketing in particular stock loan transactions that utilized a Cayman affiliate. UBS data on its stock loan transactions during a four-year period from 2004 to 2007, indicate that UBS enabled its clients to dodge payment of U.S. dividend taxes totaling about \$62 million; an eight-year analysis covering 2000 to 2007, conducted by a single hedge fund, estimated that UBS had helped it escape payment of U.S. dividend taxes totaling about \$70 million. In 2007, however, UBS made a business decision to stop conducting Cayman stock loan transactions and no longer offers these transactions to its clients.

Tax-Driven Transactions. Like Lehman Brothers, Morgan Stanley, and Deutsche Bank, UBS documents make it plain that its dividend enhancement transactions were designed to enable its offshore hedge fund clients to dodge U.S. taxes on U.S. stock dividends.

This point was made explicitly, for example, in 2005 marketing materials developed for its "Dividend Enhancement" products. Using a question and answer format, the UBS document asks: "In general what does Dividend enhancement [on long positions] offer me?" UBS then responds:

"A Cayman Islands (or other offshore) domiciled Hedge Fund enjoys legal and administrative benefits associated with offshore incorporation. However, one downside to being domiciled in a jurisdiction that does not have an income tax treaty with the United States is that dividends on your US equity holdings are subject to a 30% withholding tax, which reduces the net yield of such holdings. Dividend enhancement provides incremental revenue to significantly mitigate this yield loss."

Another UBS internal document, entitled "Why offer Dividend Enhancement?," presents several reasons for conducting these transactions, including using the products to attract and retain hedge

¹⁰⁹ UBS Investment Bank, "Dividend Enhancement on Long Positions" (2005), Bates No. UBS 000529-30. Note that UBS, like other financial institutions, had an active "dividend enhancement" business focusing on short equity positions, in which the financial institution would structure a transaction to require an offshore hedge fund to pay less than the 100% of the substitute dividend it should pay as the short equity party. The Subcommittee has not focused on short enhancements and this Report primarily discusses long equity dividend tax abuse transactions.

²⁰⁰ Id.

fund clients, outmaneuver competitors, and generate profits. 201 The first paragraph in the document states, for example, that offering dividend enhancement products "differentiates us from our competitors and provides an opportunity for us to speak with Hedge Funds."202 The next paragraph states: "It's profitable. Estimated 2005 P&L is \$5 million. This amount should easily double next year after audited financials allow us to gather supply from external lenders." The next point is: "Often, Hedge Fund[s] will move positions in and leave them with us to gain the enhancement. This increases balances. Conversely, they will move positions to competitors if we can't offer enhancement." The document concludes: "It wins us new/added business that can generate P&L in other firm 'silos," providing four examples of hedge funds which, after UBS began "enhancing" their dividends, increased their balances with the bank.204

UBS plainly pitched its dividend enhancement products to clients by citing its potential tax savings, as shown in this marketing effort aimed at Maverick Capital, an investment manager for several offshore hedge funds:

"For US securities paying dividends, the IRS requires a 30% withholding tax be levied against offshore entities. This means that a Cayman entity such as Mayerick Fund LDC would only receive 70% value on their US dividends. UBS offers a product known as "Dividend Enhancement", whereby Maverick LDC is able to realize a greater portion of their dividends, and pay an amount less than 100% of a dividend, if they are short a security. It works on the basis that UBS can get more favorable treatment than an offshore entity and thus can put the following arrangement in place, whereby UBS passes an enhanced amount back to the client."205

On another occasion, UBS sent an email to an offshore hedge fund client entitled, "Dividend Enhancement," which provided, in part, the following:

²⁰¹ See UBS, "Why offer Dividend Enhancement?" (undated, but likely 2005), Bates No. UBS 000512

²⁰³ Id.

^{205 &}quot;Dividend Enhancement" document attached to email sent from Veronica Wilthew, UBS, to Michael Madaio and Mark Niesen, both UBS, FW: Dividend Enhancement Flow (Nov. 1, 2004), Bates No. UBS 000509-11.

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"As per our conversation Friday we would like to sign your offshore account to a [Global Master Securities Lending Agreement] with our UBS Cayman entity so you can benefit from our enhanced dividend program.

"Here is a brief description of how it works.

"Long Positions

"Currently you are entitled to 70% of any US dividend in the offshore account. With these agreements we would borrow your stock and loan it to a third party. By doing this we will be able to enhance your divide[n]d (85% on average)."206

UBS Cayman Stock Loan Transactions. UBS primarily used stock loan transactions, frequently along with an intercompany total return swap, to enable its clients to escape U.S. dividend taxes. To conduct these transactions, UBS made use of an offshore shell corporation in the Cayman Islands, called UBS Cayman Ltd., that "was formed in 1999 to facilitate long dividend enhancement for the firm's hedge fund clients." 207

UBS Cayman Ltd. apparently had no employees of its own, no physical office, and no business operations other than to function as a placeholder in various UBS dividend-related transactions. When asked by the IRS about this corporation, UBS described it as follows:

"UBSCL is not licensed, registered or regulated (e.g., by reason of capital adequacy requirements) as a broker/dealer or similar entity in any jurisdiction, cannot access the capital markets except through a broker/dealer, and does not hold itself out as a broker/dealer. UBSCL is not, and does not hold itself out as being, capable of servicing customers (e.g., it does not possess adequate systems or personnel), UBSCL's counterparties do not view themselves as UBSCL's customers, and UBSCL does not have any fiduciary duties to its counterparties. UBSCL does not make markets, possess inventory, or have an established place of business. UBSCL does not hold itself out as a merchant or as willing to enter into either side of securities or derivative trades.",208

²⁰⁶ Email from Anthony Silvio, UBS, to Catherin Carr, PCM-US, RE: Dividend Enhancement (Aug. 30, 2004), Bates No. UBS 000653-54.

²⁰⁷ UBS Cayman Ltd. Capital Request - Request for Circular GEB Approval (Jan. 23, 2004). Bates No. UBS 000521-528.

²⁰⁸ Technical analysis prepared by UBS' legal counsel for the IRS (undated), Bates No. UBS 000471-501, at 4 n.4.

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Despite being a shell operation, UBS Cayman Ltd. was routinely used by UBS in its dividend-related stock loan transactions, most of which were "structured for a week or less."209

An internal UBS document explains how its "Dividend Enhancement" transactions typically worked. 210 The transaction was described as follows:

- "1) UBS Cayman borrows the US stock from [a Cayman hedge fundl.
- "2) UBS Cayman executes a total return swap with UBS AG, whereby Cayman are 'long' the returns.
- "3) UBS Cayman sell[s] the stock to UBS AG London in order for UBS AG London to hedge the swap.
- "4) UBS AG London creates a long basket trade (in swap form), including the security that it received from UBS Cayman.
- "5) UBS AG London sell[s] the physical stock to the swap counterpart, as the other side of the swap transaction UBS AG London then receive returns on the swap, including 100% of the dividends value (as a part of the swap transaction), on the stock received from UBS Cayman.
- "6) UBS AG London returns 90% of the value of the dividend to UBS Cayman, this is done by way of a commission, to reflect 90% value of such dividend.
- "7) UBS Cayman passes the 90% dividend payment onto [the Cayman hedge fund]."211

The document also states: "At the expiration of the transaction UBS AG London purchases the stock, in the market, in the name of UBS Cayman. The stock is then returned to [the Cayman hedge fund], and the transaction is closed."212 The position of UBS legal counsel is that this admittedly "convoluted structure" complies with IRS Notice 97-66, and

²⁰⁹ Id.

^{210 &}quot;Dividend Enhancement" document attached to email sent from Veronica Wilthew, UBS, to Michael Madaio and Mark Niesen, both UBS, FW: Dividend Enhancement Flow (Nov. 1, 2004), Bates No. UBS 000509-11.

²¹¹ Id.

²¹² Id.

enables UBS to omit any tax withholding for the offshore hedge fund involved in the transaction. 213

A 2007 legal opinion prepared for UBS indicates that the bank continued to engage in these abusive stock loans until recently. The opinion describes a typical UBS Cayman stock loan transaction as follows: "UBS Cayman borrows voting shares of publicly-traded U.S. corporations from unrelated persons . . . or from UBS Zurich, a Swiss branch of UBS AG ('UBS Zurich'), and lends those shares to unrelated non-U.S. persons ineligible for the benefits of a tax treaty that reduces withholding tax on dividends." The opinion notes that to carry out these transactions, "UBS Cayman conduct[ed] its activities by means of employees located in the United States that [we]re also employees of UBS Securities LLC."215

In June 2006, the UBS Head of Tax for the Americas made a presentation on the Cayman stock loan transactions to the UBS management board in Switzerland. The board was asked to approve an increase in the stock lending business, but the board decided to hold the business at existing level and imposed a \$72 million risk limit on the Cayman stock loan transactions, meaning that those particular transactions could generate no more than \$72 million in substitute dividend payments. UBS representatives informed the Subcommittee that in November 2007, the management board in Switzerland made the decision to terminate the Cayman Islands stock lending program. UBS told the Subcommittee that the program was terminated because it was not making money and for policy reasons. UBS informed the Subcommittee that today it does not conduct any stock lending transactions based upon IRS Notice 97-66.

Lost Tax Revenues. UBS provided the Subcommittee with spreadsheets and other documents containing detailed data related to its Cayman stock loan transactions over a four-year period, from 2004 to

²¹⁸ Id.

^{2]†} Memorandum from Sullivan & Cromwell LLP to UBS, "Withholding Tax On Substitute Dividend Payments" (Aug. 17, 2007), Bates No. UBS 000664-68, at 2.

²¹⁵ Id.

²¹⁶ Subcommittee staff interview with Todd Tuckner, UBS Head of Tax for the Americas (Nov. 1, 2007).

²¹⁷ Id.

²¹⁸ Subcommittee staff interview with Todd Tuckner, UBS Head of Tax for the Americas (Aug. 25, 2008).

²¹⁹ Id.

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2007. These spreadsheets show that, in 2004, UBS conducted stock loan transactions in which it passed through substitute dividend payments to its clients totaling about \$42 million which, after application of the 30% dividend tax, meant that UBS had helped its clients dodge payment of about \$12 million in dividend taxes. 220 In 2005, the total amount of substitute dividends was about \$67 million, and the total amount of unpaid dividend taxes was about \$20 million. In 2006, the total amount of substitute dividend payments was about \$71 million, and the unpaid dividend taxes about \$21 million. In 2007, the year in which the program was terminated in November, the total amount of substitute dividends was about \$26 million, and the unpaid dividend taxes about \$8 million. Altogether then, over the four-year period, UBS passed onto its clients substitute dividend payments totaling \$206 million and helped them skip paying dividend taxes totaling about \$62 million.

The spreadsheets also indicate that UBS' top clients during this four-year period were primarily offshore hedge funds. In 2006 alone, for example, Maverick participated in Cayman stock loan transactions that generated a total of about \$24 million in dividends, and enabled it to dodge dividend taxes totaling about \$7 million. Highsfield Capital participated in Cayman stock loan transactions that generated a total of about \$17 million in dividends and unpaid dividend taxes of about \$5 million. Jana Master Fund participated in transactions that generated about \$9 million in dividends and unpaid dividend taxes of about \$3 million. Other clients included S.A.C. Capital Associates, The Canyon Value Realization Fund (Cayman) Ltd., Oz Overseas Fund, and Black Diamond Offshore Ltd.

Another analysis, prepared by Maverick Capital, has additional information related to UBS and provides another perspective on the tax revenues lost as a result of its abusive dividend tax transactions. In this analysis, which was prepared for Maverick's internal use, Maverick estimated the "Tax Benefit" from "U.S. Dividend Enhancements" conducted over an eight-year period, from 2000 to 2007, for several offshore funds that it managed. Using specific data from past dividend enhancement transactions involving U.S. securities, Maverick estimated that, overall, of the U.S. dividend related payments made to its offshore hedge funds, the potential unpaid U.S. dividend taxes totaled about \$95 million. Of that \$95 million, the data showed that the bulk of the

²²⁰ The totals provided in this paragraph and the next were derived by the Subcommittee from UBS Cayman Substitute Payments spreadsheets, 2004, 2005, 2006, and 2007 (Feb. 28 and Mar. 17, 2008).

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transactions had been brokered by UBS which had enabled Maverick to escape payment of about \$70 million. 221

A third analysis, prepared in 2007 by Citigroup in connection with its decision to voluntarily pay the IRS \$24 million in unpaid dividend taxes associated with certain swap transactions (explained further below) identifies swaps that Citigroup conducted with UBS over a three-year period, from 2003 to 2005. Citigroup determined that these UBS brokered transactions had provided it with dividend-based payments totaling about \$22 million, and allowed it to escape paying dividend taxes totaling about \$3.4 million. 222

Using different years and different counterparties, with some overlap, each of these totals, \$62 million, \$70 million, and \$3.4 million, helps quantify the dividend taxes that were never withheld or remitted to the U.S. treasury due to transactions arranged by UBS. At the least, they show that UBS structured transactions that enabled its clients to dodge payment of tens of millions of dollars in U.S. dividend taxes.

E. Merrill Lynch Case History

1. Background

Merrill Lynch is a global investment bank with headquarters in New York City, 223 offices in more than 40 countries, and over 64,000 employees worldwide.224 Through its subsidiaries, Merrill Lynch holds nearly \$2 trillion in client assets, 225 as well as a 45% share in BlackRock, a financial firm with approximately \$1.4 trillion in assets under management. 226 It conducts much of its trading operations through Merrill Lynch, Pierce, Fenner & Smith Incorporated, a registered U.S. broker-dealer. Other subsidiaries include ML IBK Positions, Inc., through which Merrill Lynch invests in private equity, and Merrill Lynch International Bank Limited, which is its primary non-U.S. banking entity. In 2007, Merrill reported a loss of \$8.6 billion. 227

²²¹ Maverick Funds charts entitled, "U.S. Dividend Enhancements" and "Summary of Domestic Enhancements (by broker)" (Dec. 31, 2007), Bates No. MAV0000856-57.

²²² Citigroup untitled chart prepared for the IRS listing swap transactions from 2003 to 2005 (undated), Bates No. CITI_PSIWHTAX001460. See also discussion of Citigroup case history.

²²³ http://www.ml.com/media/92209.pdf.

²²⁴ Merrill Lynch & Co Inc., Annual Report on Form 10-K for the Fiscal Year Ended Dec. 28. 2007 at 19 (2008).

²²⁵ Id. at 20.

²²⁶ ld.

²²⁷ Id. at 22.

John Thain, former head of the New York Stock Exchange, became the firm's Chairman and Chief Executive Officer in December 2007. 228

2. Dividend Tax Abusive Transactions

Merrill Lynch developed, marketed, and implemented a variety of abusive dividend tax transactions to enable its non-U.S. clients to dodge payment of U.S. taxes on U.S. stock dividends. These abusive transactions made use of not only swaps and stock loans, but also stock options, including coordinated puts and calls. In 2005, under a program called Project Gemini, Merrill began conducting abusive stock loan transactions using an offshore corporation established for that purpose called Merrill Lynch Equity Solutions Jersey (MLESJ). Some of its clients, worried about the tax risk involved in these loans, asked Merrill to indemnify them against the associated tax liability. In early 2008, apparently due to the Subcommittee investigation, Merrill suspended its Project Gemini stock loans.

Tax-Driven Transactions. Merrill documents clearly demonstrate that it has developed and marketed its dividend enhancement products as a way for its non-U.S. clients to dodge payment of U.S. dividend taxes.

This approach is clearly set out, for example, in 2004 documents related to the Microsoft \$3 special dividend. On July 21, 2004, the day after Microsoft announced the special dividend, the head of Merrill's corporate equity derivatives group in London sent an email to several colleagues stating: "Okay, so we always use Microsoft as the 'no dividend' example in tax scenarios, and now that will have to stop! \$32 billion dollars in dividends is a lot of dividends, and we should discuss whether there is value to be had. ... We will obviously need to discuss generally the Firm's position on [IRS Notice] 97-66 and look at derivative solutions."²²⁹

An employee in Merrill's Global Tax group in New York responded with several ideas for financial transactions to enable clients to dodge payment of U.S. dividend taxes on the Microsoft dividend, including transactions involving stock loans, total return swaps, and options. He observed:

²²⁸ Id. at 167.

²²⁹ Email from Jacqueline Duval-Major, Merrill Lynch International in London, to Elissa Shendalman and Mike Gaffney, both Merrill Lynch Global Tax in New York, Microsoft dividend (July 21, 2004), Bates No. MI.-PSI-00147049-52 (original email). IRS Notice 97-66 is the notice that some financial institutions claim allows certain offshore stock loan transactions to eliminate the payment of U.S. dividend taxes, as explained earlier.

"We had in place a 97-66 structure out of our SNCFE-Hong Kong entity, as it related to our Luxembourg SICAV funds. This structure was put on hold because the systems infrastructure supporting the trade did not work as anticipated. We also know that Morgan Stanley had a 97-66 facility for a couple of years, and our 97-66 thing was an internal response to that. ... I also heard that the IRS is looking into this issue as part of the single stock futures project and there is some concern that whatever rules they devise as part of that could adversely impact the 97-66 trades. Other thoughts - ...[t]ypical total return swaps or collars to avoid [withholding] tax."²³⁰

In a second email on the same day, the Global Tax employee wrote:

"I also just heard that there is extreme interest in foreign holders replacing their long physical position with a put/call combo. ... The options exchange is pricing 100% of the dividend into the option, so the foreign holders have the incentive to do a 'conversion transaction' whereby they sell their stock to the specialist and simultaneously replace it with a put/call synthetic. ... [B]y holding options where the strikes automatically drop by 100% of the dividend, foreign holders can receive 100% of the dividend through the options."²³¹

He also noted the tax risk associated with these transactions:

"Normally, we are concerned where a customer (i) sells stock to ML [Merrill Lynch]; (ii) at the same time faces ML on an OTC TRS [over-the-counter total return swap] or forward or put/call combo; and (iii) gets the stock back at the end, either via physical settlement or a cross out or what have you. I am not that concerned where the options are exchange traded because ML is technically not the counterparty and we could close out our position through offset on the exchange while our customer still has his options with OCC. However, OTC options don't have that argument available, thus may be a repo [stock repurchase], thus there may be withholding tax.¹⁺²³²

The head of Merrill's corporate equity derivatives group responded:

²³⁰ Email from Thomas Visone, Merrill Lynch Global Tax in New York, to Jacqueline Duval-Major and other Merrill Lynch colleagues in New York, London, and Montreal, RE: Microsoft dividend (July 22, 2004), Bates No. ML-PSI-00147049-51 (fourth email).

²³¹ Email from Thomas Visone, Merrill Lynch Global Tax in New York, to Jacqueline Duval-Major and other Merrill Lynch colleagues in New York, London, and Montreal, RE: Microsoft dividend (July 22, 2004), Bates No. ML-PSI-00147049-51 (sixth email) (emphasis in original).

²³² Id. at 50.

"Tom: This is exactly what I had in mind – a synthetic long structure for non-US holders to get as close to 100% of that dividend value: Put/call combo (or as you mentioned in an earlier email, total rate of return swap). ... Maybe we could ameliorate your concerns re recharacterization as a repo with an OTC by making sure that either the sale or any potential purchase at the close of our derivative potion to unwind the hedge (or both) are not done directly with a client, but rather from a broker. Also, I firmly believe that when ML has synthetic in and sy[n]thetic out (your example below on the short collar), it is hard to show a repo."²³³

These emails show that, in 2004, Merrill employees were actively designing financial transactions to enable their "non-US holders" of Microsoft stock to avoid dividend withholding, were aware of the tax risk that the transactions might be recharacterized as a stock sale and repurchase subject to dividend taxes, and were interested in including features that would make it "hard to show a repo."

One month later, in August 2004, Merrill employees exchanged emails regarding the transactions being developed:

"Can you speak to ... the US swaps desk about Microsoft – after our follow up phone call with tax dept today related to various ways our clients are going to expect to see yield enhancement trades on MSFT. ... Paul is writing up (again) a list of the trades proposed and the advantages/disadvantages of each, with the view to get Tax dept guidelines asap." 234

One colleague responded: "Our competitors are out there with products and we need to get ours out there asap!" 235

By early October, Merrill circulated an email describing a proposed "Microsoft Trade," involving coordinated puts and calls. 236 The author of the email stated: "The beauty of the trade is that the option strike is lowered by \$3 on the XD [ex dividend] date, thereby

²³³ Email from Jacqueline Duval-Major, Merrill Lynch International in London, to Thomas Visone, Elissa Shendalman, and Mike Gaffney, all Merrill Lynch Global Tax in New York, RE: Microsoft dividend (July 21, 2004), Bates No. ML-PSI-00147049-52 (seventh email).

²³⁴ Email from Jacqueline Duval-Major, Merrill Lynch International in London, to Tobias Gehrke, also in London, and Paul Cipriano, US swaps desk in New York, microsoft (Aug. 27, 2004), Bates No. ML-PSI-00054121-24 (original email).

²²⁵ Email from Tobias Gehrke, Merrill Lynch London, to Jacqueline Duval-Major in London and others, RE: microsoft (Aug. 31, 2004), Bates No. ML-PSI-00054121-24 (second email).

²³⁶ Email from Andrew Miller, Merrill Lynch in London, to "Equity Convertible/Derivative Sales" distribution list, Microsoft Trade yesterday (Oct. 7, 2004), Bates No. ML-PSI-00149878-80 (original email).

giving 100% of the special dividend." The email provided an example of how the trade would be executed for a non-U.S. client subject to "a US dividend withholding rate of 15%." It indicated that the trade would return 100% of the withheld dividend, less Merrill's fee: "The fees of 6 cents per share (or \$3 per option) equate to 2% of the special dividend. Therefore the client receives 100% gross of the dividend through the trade, or 98% net after costs." The same Merrill employee noted later that the transaction was "our only internally recommended listed trade, but clearly you have to be comfortable yourselves from a tax angle before you proceed."237

In October, Merrill's Corporate Equity Derivatives group head circulated an email to a wide group of Merrill relationship managers and corporate finance employees announcing a "yield enhancement opportunity for Clients that may hold Microsoft shares (MSFT US)."238 The email stated: "Clients who hold Microsoft shares - whether as an free-standing shareholding or as part of a basket - and who will suffer withholding tax on such shareholding (whether at 15 or 30%) may benefit from one of the proposed transactions." The email directed each employee to "[i]dentify Clients that may hold investments in MSFT US and could benefit from the yield enhancement," and to contact the Corporate Equity Derivatives group to discuss the transactions.240 It also stated: "Our competitors are offering similar products, and time is of the essence.",241

The attached presentation, whose first page was entitled "Microsoft Special Dividend: Yield Enhancement," was explicit in telling Merrill employees that the purpose of the newly-designed transactions was to help non-U.S. clients dodge payment of U.S. dividend taxes:

. "MSFT announced 20 July that it will pay \$32 billion of dividend in a \$3 per share special dividend, record date 17 November, pay date on 2 December

²³⁷ Email from Andrew Miller, Merrill Lynch in London, to several Merrill colleagues, FW: Microsoft Trade yesterday (Oct, 27, 2004), Bates No. ML-PSI-00149878-80 (second email).

²³⁸ Email from Jacqueline Duval-Major, Merrill Lynch International in London, to multiple Merrill Lynch distribution lists and employees, Microsoft Special Dividend: Yield Enhancement for Clients (Oct, 27, 2004), Bates No. ML-PSI-00147236.

²³⁹ ld.

²⁴⁰ Id.

²⁴¹ Jd.

- · Dividends paid to non-U.S. holders will be subject to US withholding tax at 30% or a less rate (usually 15%) under a tax treaty. Depending on the tax status and application [of] the relevant domestic tax law, US withholding tax suffered may represent an absolute cost to the non-US holder.
- The trade ideas in this presentation may provide a higher synthetic return to such holders than a physical dividend with withholding tax. Merrill Lynch makes money generally through the pricing of the dividend element of the synthetic transaction (and ML's hedge to that transaction).
- The Tax Department has approved these transaction parameters for yield enhancement transactions over MSFT shares. ...
- · Corporate Equity Derivatives will liaise with US Swaps Desk ... to coordinate execution of the transactions."242

The presentation then provided charts and an explanation of three possible transactions, the first involving an equity total return swap, the second an exchange traded option called a "flex option," and the third an over-the-counter option. Another Merrill document shows that Merrill actually carried out the Microsoft related swap and option transactions with more than a dozen clients, primarily offshore hedge funds, affecting over 20 million shares of Microsoft stock and resulting in over \$18.5 million in dividend taxes not being withheld and turned over to the U.S. treasury. 243

Other documents show that Merrill continued to offer equity swaps to reduce or eliminate clients' dividend taxes. For example, an analysis prepared by Citigroup, in 2007, in connection with a decision to voluntarily pay the IRS \$24 million in unpaid dividend taxes associated with certain swap transactions, explained in more detail below, included swaps with Merrill Lynch over a three-year period, from 2003 to 2005, involving nearly \$23 million in dividend related payments and \$3.4 million in unpaid dividend taxes.²⁴⁴ In 2006, Merrill's Global Markets & Investment Banking Group prepared a lengthy presentation on its

²⁴² Merrill Lynch presentation, "Yield Enhancement Opportunity[:] Microsoft Special/Cash Dividend (MSFT US) Record Date November 17, 2004" (Sept. 23, 2004), Bates No. ML-PSI-0289-94 (emphasis in original).

²⁴³ Merrill Lynch document, "Microsoft Counterparties" (undated), Bates No. ML-PSI-0485. One of the clients was a Merrill-related entity called "Merrill Lynch Investment Managers."

²⁴⁴ Citigroup untitled chart prepared for the IRS listing swap transactions from 2003 to 2005 (undated), Bates No. CITI PSIWHTAX001460. See also discussion of Citigroup case history.

development, marketing, and use of equity swap products. With respect to U.S. stocks that pay dividends, the presentation stated: "ML can pay an amount equal to 100% of the ordinary dividend." When discussing "Key Usage Considerations" for equity swaps, it listed as one key consideration: "Yield Enhancement[:] Dividend enhancement (recapture withheld dividends for foreign investors)." When discussing "Swap Applications and Advantages," it stated: "Dividend Enhancement — As synthetic instruments, swaps are not subject to the withholding taxes that may be incurred by non treaty or offshore investors who own the physical shares of a dividend paying stock," citing the usual dividend withholding tax rates of 30% and 15%. ²⁴⁸ Clearly, helping clients dodge payment of U.S. dividend taxes had become an established part of Merrill's equity swap business.

Project Gemini Stock Loans. Merrill Lynch also made use of abusive stock loans to enable its clients to dodge U.S. dividend taxes. In 2005, for example, Merrill launched Project Gemini, which it described as "a program intended to provide selected international investment funds holding US equities with an enhanced after tax return." It was planned to be "broadly market[ed]" to "foreign pension funds and investment funds with US equities." ²⁵⁰

Project Gemini initially provided "dividend enhancements" to a Luxembourg mutual fund controlled by Merrill called Merrill Lynch International Investment Fund (MLIIF), which was already executing the proposed stock loan transaction "with several of Merrill Lynch's competitors." The Project then expanded to service other funds and institutions. The Project utilized an offshore corporation in the Isle of Jersey called Merrill Lynch Equity Solutions Jersey Ltd. (MLESJ). An

²⁴⁵ Merrill Lynch presentation, "Global Financing Products Group" (Spring 2006), Bates No. ML-PSI-0123-53.

²⁴⁶ Id. at 141

²⁴⁷ Id. at 145.

²⁴⁶ Id. at 147.

²⁴⁹ Merrill Lynch presentation by its Global Markets & Investment Banking Group, "SSPC Discussion Materials[:] Project Gemini" (Aug. 4, 2005), Bates No. ML-PSI-0300-18, at 302.

²⁵⁰ Id

²⁵¹ Id. In its presentation, Merrill described MLIIF as a SICAV fund incorporated in Luxembourg, having only non-U.S. investors, and whose investments were managed by Merrill Lynch. SICAV stands for Societe d'Investissement à Capital Variable, "a Luxembourg based public limited liability company whose capital is at any time equal to the net value of its assets." Merrill wrote that, in 2005, MLIIF had "approximately \$28 billion of assets, with roughly 25% invested in US equities." It indicated that these U.S. securities were subject to a 30% dividend tax. Id. at 305.

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initial presentation on the Project explained that the proposed transaction involved: "[a] stock loan from MLIIF to a newly formed Jersey Island entity, a subsidiary of ML Group, Inc." and "[a] series of derivative transactions executed with the market by the Jersey entity and MLI to hedge ML market risk."252 It then provided a series of charts explaining the transaction.

The presentation stated: "Summary of US Tax Analysis[:] No payments into or between Merrill Lynch affiliates (MLI and [MLESJ]) will be subject to withholding tax. Payments to MLIFF under the stock loan will not be subject to withholding tax."253 A subsequent page in the presentation estimated that the Gemini Project would protect about \$72 million in annual U.S. dividends sent to Merrill clients from \$21.6 million in U.S. dividend taxes, while bringing in a net economic benefit to Merrill Lynch of about \$9.6 million. 254

Project Gemini was approved by Merrill's product review committees in August 2005, and stock loan transactions began taking place in November of that year. A month beforehand, in October 2005, an "Operating Plan" was drawn up. The Plan began by observing: "Project Gemini is a structured transaction designed to provide yield enhancement to non-US clients of Merrill Lynch that own US dividendpaying equities. From the client's perspective, the transaction involves a market standard stock loan to a subsidiary of Merrill Lynch [MLESJ]." The Operating Plan also stated:

"The structure may impose some US tax risk on ML. To manage any potential risk, ML has established a cap on the transaction which focuses on our economic return relative to potential tax risk. ... Clients may not be offered enhancement of greater than 50% of potential US withholding taxes without approval. ... Several of our competitors offer similar products (most notably Morgan Stanley, Lehman Brothers, and many non-US banks) so many natural candidates for the transaction are already being serviced and may command pricing concessions (State Street, BGI). ... The success of Project Gemini and our ability to achieve target economics relies on ML's superior reach and breadth of

²⁵² Id. at 302.

²⁵³ Id, at 313.

²⁵⁴ Id. at 317.

²⁵⁵ Merrill Lynch document entitled, "Project Gemini Operating Plan as of October 11, 2005" (Oct. 11, 2005), Bates No. ML-PSI-00049447-53.

relationships relative to our competitors. Ideal candidates are likely to include SICAVs and Irish mutual fund companies." 256

Following up on the Operating Plan's tax risk analysis, a Gemini Project review one month later disclosed that Merrill had, in fact, established a tax risk limit for the program: "Annual trading limit initially established at first to be reached of (a) \$50 million annual gross withholding tax elimination, and (b) \$25 million net withholding tax (=gross withholding tax less MLESJ fees). Limits will be reviewed after one year."

In mid-November 2005, Merrill's Americas Equity Derivatives Sales & Structured Marketing Group conducted a review of its new product and trade development and prepared a presentation. The presentation noted that the Gemini Project had begun executing its "yield enhancement program" on November 15, and projected that it would obtain 2006 revenues of \$10 million and 2007 revenues of up to \$20 million. ²⁵⁸ In the meantime, the group noted that, even without the Gemini Project, during 2005, it had executed 18 transactions, of which 15 were "dividend yield enhancement." ²⁵⁹ It noted that these transactions involved "9 hedge funds, 1 bank, 1 mutual fund, 1 personal holding company." ²⁶⁰ It also observed that "[m]aturation of on-shore and off-shore hedge fund space creates large pool of high-volume clients focused on sophisticated tax and other structured products as a new asset class." ²⁶¹

For about two years, from late 2005 until late 2007, Project Gemini conducted stock loan transactions for non-U.S. clients to reduce their U.S. dividend taxes. In early 2008, after the Subcommittee had began this investigation and contacted several financial institutions and hedge funds, Merrill Lynch decided to suspend the Project and its transactions, as explained in this email sent by a Merrill employee to a client informing the client of the decision:

²⁵⁶ Id.

²⁵⁷ Merrill Lynch document entitled, "GMI New Product Review" (Oct. 25, 2005), Bates No. ML-PSI-0319-56, at 37.

²⁵⁸ Merrill Lynch document entitled, "New Product & Trade Development," prepared by the Americas Equity Derivatives Sales & Structured Marketing Group (Nov. 17, 2005), Bates No. ML-PSI-00047439-43, at 40.

²⁵⁹ Id.

²⁶⁰ ld.

²⁶¹ Id.

"Many thanks for meeting with us early on today on short notice. As explained verbally, as a result of the actions by the US Senate's Permanent Subcommittee on Investigations our Jersey entity (Merrill Lynch Equity Solutions Jersey or MLESJ) has had to cease trading in regards its stock lending activities for US stocks. As a result of this we are seeking to have the Lender recall the securities in line with the wording as set forth below. ... Our opinion is that as the securities lending business of MLESJ undertaken in these Agreements has been materially restricted ... the clause therefore requires the Lender to recall all outstanding loans, for the borrower to return all loaned securities and for the Agreement to terminate."262

Merrill Lynch informed the Subcommittee that Project Gemini remains on suspension, although a decision could be made at some future time to renew its operation.

Tax Indemnity. While Merrill Lynch was providing stock loan transactions under Project Gemini, several of its clients, apparently worried about the tax risk, asked the firm to indemnify them against U.S. tax liability associated with the transaction.

For example, in 2007, Olayan Group, an investment firm based in Saudi Arabia, but with a New York office, expressed concerns about the potential tax risks posed by Gemini and asked Merrill Lynch to provide it with a tax indemnification agreement. On March 29, 2007, a Merrill marketing executive sent the requested language:

"[S]orry this has taken so long to get to you - as a follow up to our meeting and our 'gemini' product that can enhance the effective dividend you get on physically held US stocks (like OXY), here is our standard 'indemnity' language that you were looking for please review it and let me know your thoughts. if i'm doing my math right, i think this can save you around \$7 million per year on OXY."263

The language provided:

"[A]ll payments under this Agreement shall be made on the due date without any withholding or deduction whatsoever unless

²⁶² Email from Hamish Pritchard, Merrill Lynch in London, to Chris Poikonen and Mark Wilson, eSecLending, a securities lending manager, with copies to two Merrill colleagues, Exclusive Lending Agreements - Janus Capital and Foreign & Colonial (Jan. 17, 2008), Bates No. ML-PSI-00001261-62 (original email).

²⁶³ Email from Brian Abdoo, Merrill Lynch's Multi-Product Marketing group, to John O. Wolcott, Olayan's New York office, FW: crescent/olayan follow up (Mar. 29, 2007), Bates No. ML-PSI-00127174-76 (original email).

required by law on account of tax. If any deduction or withholding on account of tax is required by law to be made from any payment ... then the payor shall pay in the same manner and at the same time such additional amounts as would result in the receipt by the payee, free from any such withholding or deduction, such amounts as would have been received by the payee had no such deduction or withholding been required to be made and shall at the same time supply tax vouchers in respect of the same if requested."²⁶⁴

The potential client responded that its contact at a prominent U.S. law firm, Shearman & Sterling, "report that they are apparently satisfied that the transaction works. Once. Or maybe twice, but not necessarily in succession, the reason being that repeated 'abuse' (my hyperbolic word, not theirs) without a non-tax related business purpose would quickly lead the IRS to such conclusion." The Merrill employee responded: "who did you talk to at sherman? i'm pretty sure that we can get them comfortable, perhaps with a few modifications. They've represented some of our other counterparties doing this trade with us." 266

The client replied that its legal contact "has talked to a number of his partners, all of whom tell him that the transaction works, as I said, once, maybe twice because repeated use, coincidentally around dividend payment time, would provide a strong case for the IRS to assert tax evasion. So yes, looking at it in a vacuum, it works, it is the repeated 'overuse', e.g. pigs trying to be hogs, that proves problematic." 267

After Merrill responded that "something is being miscommunicated here somewhere," the client suggested that Merrill have its lawyers talk to his, explaining that his legal contact "has cautioned us that converting the JPM dividend to nontaxable ordinary income lending the shares just long enough to cover the record dates quarter after quarter does not [work]. And perhaps other clients are less

²⁶⁴ Id.

²⁶⁵ Email from John O. Wolcott, Olayan's New York office, to Brian Abdoo, Merrill Lynch's Multi-Product Marketing group, RE: crescent/olayan follow up (Mar. 29, 2007), Bates No. ML-PSI-00127174-76 (second email).

²⁶⁶ Email from Brian Abdoo, Mertill Lynch's Multi-Product Marketing group, to John O. Wolcott, Olayan's New York office, RE: crescent/olayan follow up (Apr. 19, 2007), Bates No. ML-PSI-00127174-76 (third email).

²⁶⁷ Email from John O. Wolcott, Olayan's New York office, to Brian Abdoo, Merrill Lynch's Multi-Product Marketing group, RE: crescent/olayan follow up (Apr. 19, 2007), Bates No. ML-PSI-00127174-76 (fourth email).

concerned about playing the audit lottery than are we."268 A stock loan was never undertaken.

During the same time period, Merrill Lynch was also talking to another client, Goldman Sachs Asset Management (GSAM), the offshore hedge fund management arm of Goldman Sachs, that also had requested tax indemnity. In January 2007, Merrill Lynch had proposed that GSAM enter into a Project Gemini stock loan transaction with its Jersey subsidiary, MLESJ. Before agreeing to do so, GSAM asked Merrill Lynch provide it with an indemnity agreement to protect it against any U.S. tax liability. Merrill Lynch and GSAM then negotiated over the wording of the proposed agreement for the next three months. 271

The provisions under discussion, which appear to have been written initially by GSAM, would have required Merrill, as borrower of the stock in question, to "fully comply with all applicable United States income tax withholding obligations if any," and state that Merrill will be "liable for and will fully indemnify the Lender for any United States tax liability, including any interest, penalties or additions to tax ... with respect to any failure to withhold and timely pay to the U.S. Internal Revenue Service any United States withholding tax imposed on any substitute payments made to the Lender." Other provisions would have required GSAM, as the lender of the stock, to notify Merrill within 30 days of receiving any claim from the U.S. Government for withholding taxes; give Merrill the right to take over the defense against any IRS claim for taxes; and refuse to agree to any tax settlement without Merrill's written consent. Merrill also proposed a clause that would have prohibited GSAM from "consulting with U.S. governmental officials" without Merrill's consent, but GSAM stated that it could not agree to it.272

By May 2007, one GSAM employee told another that "it seems ML is re-evaluating the viability of this product. ... I don't think this is

²⁶⁸ Email from John O. Wolcott, Olayan's New York office, to Brian Abdoo, Merrill Lynch's Multi-Product Marketing group, RE; crescent/olayan follow up (Apr. 20, 2007), Bates No. ML-PSI-00127174 (sixth email).

²⁶⁹ See Merrill Lynch presentation entitled, "Enhanced Stock Lending Over US Equities[:] GSAM" (Jan. 30, 2007), Bates Nos. GS-PSI-002397-2401.

²⁷⁰ See email from Karl Wianecki, GSAM, to several GSAM colleagues, FW: Basic flows for US (Feb. 15, 2007), Bates No. GS-PSI-002396; Subcommittee interview with GSAM (Aug. 29, 2008).

²⁷¹ Emails between Merrill Lynch and GSAM personnel, RE: US stock lending to MLESJ (from Feb. 16 to May 15, 2007), Bates Nos. GS-PSI-002513-22 and GS-PSI-05768-78.

²⁷² Id. at GS-PSI-05775_

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going to happen."273 On May 15, Merrill Lynch announced to GSAM that its tax department and business personnel had completed work on:

"a standardized indemnity that we can offer in relation to these transactions going forward. Attached is a mark up showing how this changes from what we had been discussing. Note that we can accept no substantive changes to this. Apologies for the timing being during our negotiation, however this has been an ongoing project on our side. We look forward to discussing this with you and hope that it is acceptable."274

Apparently, however, the new proposal was not acceptable to GSAM, and for that and other reasons, no stock loan transaction was concluded.275

Lost Tax Revenue. The evidence associated with Merrill's dividend tax transactions indicates that these transactions likely produced substantial tax losses for the U.S. treasury. For example, Merrill's internal presentation on Project Gemini projected that, each year the program was in effect, the stock loans would enable Merrill clients to avoid paying about \$21.6 million in taxes on \$72 million in U.S. dividends. 276 Merrill established an even higher dollar-value limit on the annual tax risk that could be incurred by the program, setting it at the first to be reached of: "\$50 million annual gross withholding tax elimination" or "\$25 million net withholding tax (+gross withholding tax less [Merrill] fees)." A member of Merrill's Multi-Product Marketing group told an offshore hedge fund client in 2007, that the Gemini stock loan program could save it about \$7 million in dividend taxes per year on a single U.S. security. 277 These documents show that Merrill expected its stock loan program to result in \$20 to \$50 million in lost tax revenues for the United States each year. The program was actually in operation for about two years, before being suspended in January 2008.

²⁷³ Email from Karl Wianecki to Cary Chropuvka, both of GSAM, RE: US stock lending to MLESJ (May 3, 2007), Bates No. GS-PSI-05768-79, at 71.

²⁷⁴ Email from Graham Seaton, Merrill Lynch, to Rachel Birnbaum, GSAM, with copies to other Merrill Lynch and GSAM employees, RE: US stock lending to MLESJ (May 15, 2007), Bates No. GS-PSI-002513.

²⁷⁵ Subcommittee interviews with Merrill Lynch (Sept. 2, 2008) and GSAM (Aug. 29, 2008).

²⁷⁶ Merrill Lynch presentation by its Global Markets & Investment Banking Group, "SSPC Discussion Materials[:] Project Gemini" (Aug. 4, 2005), Bates No. ML-PSI-0300-18.

²⁷⁷ Email from Brian Abdoo, Merrill Lynch's Multi-Product Marketing group, to John O. Wolcott, Olayan's New York office, FW: crescent/olayan follow up (Mar. 29, 2007), Bates No. ML-PSI-00127174-76 (original email).

Merrill's other dividend enhancement products also caused tax losses. In 2004, for example, its Microsoft swap and option transactions resulted in over \$18.5 million in dividend taxes not being withheld or remitted to the IRS. 278 As mentioned earlier, from 2003 to 2005, Merrill conducted swap transactions with Citigroup that involved \$23 million in dividend equivalent payments and about \$3.4 million in unpaid dividend taxes.²⁷⁹ Another client, Maverick Capital, calculated that, in just two years, from 2006 to 2007, Merrill had enabled its offshore hedge funds to escape paying dividend taxes totaling nearly \$5 million. 280 Those figures indicate that Merrill's swap transactions were capable of producing millions of dollars in annual tax "savings" for each of its clients and an equivalent annual tax losses for the U.S. Government.

These multi-million-dollar totals, \$21.6 million, \$7 million, \$18.5 million, \$3.4 million and \$5 million, which involve a limited portion of Merrill's dividend enhancement business, show that, in just four years, its transactions caused the U.S. treasury to lose out on tens of millions of dollars in unpaid dividend taxes.

Merrill Lynch has engaged in abusive dividend tax transactions, including stock swaps, loans, and options, for at least four years. These transactions became an established and profitable part of its business. The documents show that Merrill Lynch designed, marketed, and implemented these abusive transactions to enable its non-U.S. clients to dodge payment of U.S. dividend taxes, that Merrill Lynch personnel were well aware of the associated tax risk, and that Merrill Lynch took specific steps to limit its tax exposure. It was apparently only after this investigation launched an inquiry into these matters that Merrill Lynch decided to suspend one type of abusive dividend tax transaction, involving its Project Gemini stock loans.

F. Citigroup Case History

1. Background

Citigroup Inc. ("Citi") is one of the largest financial institutions formed and headquartered in the United States, with assets that, at the end of 2007, exceeded \$2.18 trillion. 281 Citi currently operates in about

²⁷⁸ Merrill Lynch document entitled, "Microsoft Counterparties" (undated), Bates No. ML-PSI-0485.

²⁷⁹ Citigroup untitled chart prepared for the IRS listing swap transactions from 2003 to 2005 (undated), Bates No. CITI_PSIWHTAX001460. See also discussion of Citigroup case history.

²⁸⁰ Maverick Funds charts entitled, "U.S. Dividend Enhancements" and "Summary of Domestic Enhancements (by broker)" (Dec. 31, 2007), Bates No. MAV0000856-57.

²⁸¹ Citigroup Inc., 2007 Annual Report at 66.

100 countries, employs over 385,000 individuals worldwide, and is organized into four major segments, Global Consumer Group, Citi Markets and Banking, Global Wealth Management, and Citi Alternative Investments. 282 In fiscal year 2007, Citi reported a net income of \$3.6 billion. 283 Citi's current Chief Executive Officer is Vikram Pandit. 284

2. Dividend Tax Abusive Transactions

This final case history presents a unique fact pattern in which, in 2007, Citi took the initiative to pay the IRS \$24 million in withholding taxes on certain swap transactions that Citi had undertaken from 2003 to 2005, tied to U.S. stocks for which \$160 million in dividend equivalents had been paid but no dividend taxes had been originally withheld.

Citi apparently began engaging in what it termed "dividend uplift" transactions in 2002.285 In a 2006 letter to the New York Stock Exchange, Citi explained that its Equity Finance Desk in New York, which dealt primarily with broker-dealers and hedge funds, had begun to engage in transactions "dedicated to achieving 'dividend uplift' for foreign customers in respect of U.S. equities ... with the most significant activity occurring in 2004 and early 2005."286 Citi described these transactions as follows:

"U.S. tax rules provide that dividend equivalent amounts paid to a foreign investor under a derivative contract are not subject to withholding tax. By contrast, actual dividends on U.S. equities are subject to U.S. withholding tax. In the dividend uplift trades, CGML - Citigroup's U.K. broker/dealer - would acquire a U.S. equity security from an offshore fund or dealer (via a transaction between that entity and Citigroup Global Markets, Inc. ('CGMI')) and enter into a total return swap ('TRS') with that entity. At the termination of the TRS, the offshore entity would in many instances reacquire the equities. In exchange for a LIBOR-based return, CGML paid dividend equivalent amounts to the offshore entity under the TRS, and treated those amounts as paid on a bona fide derivative contract, rather than as a pass-through of dividends on stock held in a custodial-type capacity. This treatment allowed the payments to be made free of the U.S. withholding taxes that

²⁸² Id. at 2. Note: Employment figure includes both full-time and part-time employees.

²⁸³ See id. at 3.

²⁸⁴ Id. at 4.

²⁸⁵ See Letter from Citigroup to the New York Stock Exchange (Feb. 1, 2006) and attachments. Bates No. CITI_PSIWHTAX000738-43, at 739.

²⁸⁶ Id.

would otherwise have been due to be withheld on dividends paid to the offshore entity. ...

"Customers executing TRSs with the Desk frequently sell the underlying securities to the Desk at the beginning of the TRSs and then wish to reacquire the securities at the termination of the TRS, without any execution or other risk. However, if at the time the TRS was entered into the customer and the Desk had an understanding that at termination of the TRS the securities would be sold (directly or indirectly) back to the customer, the TRS may be recharacterized for tax purposes as a financing transaction, and the customer as the continuing owner of the securities. In that case, Citigroup ... may be obligated to the IRS or another tax authority for payment of tax that should have been withheld on payments of dividends or dividend equivalent amounts. ...

"Citigroup's Tax Department promulgated transaction guidelines for TRSs on U.S. equities in order to minimize the risk that such transactions would be recharacterized as financings and subsequently lose their intended tax benefits. The risk is mitigated principally by minimizing the chances that the underlying equities would be crossed back to customers. ...

"[The Citigroup] Desk engaged in transactions in 2004 and 2005 in which it purchased U.S. ... equities directly from customers ... and then resold the equities back to the customers upon termination of the TRSs, either directly or through interdealer brokers." 287

This letter shows that Citi knowingly used total return swaps to enable its offshore clients to dodge U.S. taxes on their stock dividends. The letter also makes it clear that, as part of its dividend uplift transactions, Citi often took physical possession of the shares of stock that were the subject of the swap, and then returned the shares to the client after the swap ended, in violation of its own stated policies. The letter shows that Citi was aware that this practice could lead to a determination that the client never really gave up ownership of the stock during the swap transaction, that Citi was really engaged in a stock loan, and that the real purpose of the transaction was to enable Citi to pass through stock dividend payments to the client tax free. The letter explains that, to avoid this outcome, Citi had promulgated transaction guidelines which consisted principally of telling its employees not to return stock to a client after a dividend uplift swap concluded.

²⁸⁷ Id. at 739-740.

Despite these guidelines, Citi employees on the Equity Finance Desk apparently let clients know that Citi would re-deliver stock to them at the end of a dividend uplift swap. This practice was apparently uncovered after Citi's Internal Audit Department raised questions about whether certain dividend uplift swaps being conducted by the Equity Finance Desk complied with Citi's tax guidelines. That audit led to an investigation by outside counsel²⁸⁸ which led, in turn, to Citi's deciding to disclose certain swap transactions to the IRS and offer to pay withholding tax on the dividend equivalent payments that had been provided to clients. The IRS, after receiving the disclosure from Citi, required the bank to provide additional information about the identified swaps and analyze other transactions as well.

Citi Analysis. Citi told the IRS that "extensive interviews" conducted in connection with its investigation had led it to conclude that "as to some total return swap transactions, there was an apparent understanding at the inception of the trade that the shares would effectively be delivered back to the counterparty at the termination of the trade through the use of a large volume market-on-close order, a direct cross to the counterparty, or an effective sale to the counterparty by way of an inter-dealer broker." Citi said that two employees on its Equity Finance business unit were responsible for those "understandings" and had been subjected to "disciplinary action" as a result. 290

Citi told the IRS that, because of the prior understanding that Citi would re-deliver purchased shares to a client at the close of the swap transaction, Citi had determined that those swaps could be recharacterized as stock repurchase agreements or securities loans, ²⁹¹ and withholding tax could be assessed with respect to the dividend equivalent amounts that had been paid under the swaps. ²⁹² Citi also noted that these transactions "were not in full compliance with" its Tax

²⁸⁸ According to Citigroup representatives, the investigation examined all total return swaps entered into during the 2003-2005 time period and involving U.S. dividend-paying securities and non-U.S. parties.

²⁸⁹ Citigroup memorandum to the IRS, "IRS Withholding Tax Examination (2003-2005): Total Return Swaps over US Equities" (June 14, 2007), Bates No. CIT1_PSIWITAX001208-29 (hereinafter "Citi Memorandum to IRS"), at 1209-10.

²⁹⁰ Id. at 1210. Another document indicates that the disciplinary action taken with respect to one of the Citi employees was to suspend him from his position for two months. See Letter from Citigroup to the New York Stock Exchange (Feb. 1, 2006) and attachments, Bates No. CTT1_PSIWHTAX000738-43, at 741.

²⁹¹ Citi Memorandum to IRS, at 1210.

²⁷² Id. at 1208:

Policy Guidelines, which had been designed to ensure that its equity swaps would not incur these types of taxes.293

Citi told the IRS that all of the swaps in question had been executed by its broker-dealers in the United Kingdom, which meant that the applicable dividend withholding tax rate was 15%. 294 After applying this 15% rate to the \$160 million in dividend payments, Citi paid the IRS withholding taxes totaling \$24 million.

While Citi's payment of withholding taxes to the IRS could be viewed as an admission of wrongdoing, Citi states in its memorandum to the IRS that it had "decided to pay US withholding tax on the dividend equivalent amounts that had been paid under the transactions, even though the tax liability was uncertain."295

Excluded Transactions. While Citi took the initiative to pay withholding taxes for certain equity swaps, Citi declined to take the same action with respect to other swap transactions identified in its review as exhibiting troubling practices. The transactions, most of which were transacted with hedge funds, were conducted through Citi's Equity Finance business unit and generated dividends of \$239 million. Citi's rational for not paying withholding on those transactions was that there was no apparent understanding at the inception of the trade that the counterparty would seek return of the shares at the termination of the swap:

"The Equity Finance transactions for which Citi did not pay withholding taxes included those transactions where it was unclear at the inception of the trade whether the counterparty would seek delivery of the shares back at the termination of the trade and, accordingly, there was generally no apparent understanding at the inception of the trade regarding possible re-delivery of the shares upon termination. These transactions involved approximately \$239M of dividends, and were not executed with UK broker-dealers. Interviews indicated that most of these transactions were executed with hedge funds. Typically, the hedge funds were more interested in synthetic exposure, rather than delivery and re-delivery of shares."296

²⁹³ Id. at 1209. Citi's "Tax Policy Guidelines for Total Return Swaps on US Equities" (Dec. 1, 2003) can be found at 1214.

²⁹⁴ ld. at 1210.

²⁹⁵ Id.

²⁹⁶ Id. at 1211.

However, many of those transactions included activities that raise concerns and are identified as "Red Flags" in this Report:

"As noted in Citi's letter dated March 2, 2007, however, the transactions on which no withholding taxes were paid did include: (1) transactions where Citi purchased shares from the swap counterparty at inception of the swap and sold shares to the counterparty upon termination of the swap, (2) transactions where Citi purchased shares from and/or sold shares to an IDB, and (3) transactions where Citi purchased shares on an exchange (including shares purchased pursuant to market-on-close orders) at inception of the swap and/or sold shares on an exchange (including shares sold pursuant to market-on-close orders) upon termination of the swap. However, as stated above, there was generally no apparent understanding at the inception of the swap to deliver shares back to the counterparty at the termination of the trade."²⁹⁷

Citi also declined to pay withholding tax on equity swaps which had been conducted by its Equity Derivatives business unit and were tied to U.S. stock that paid another \$36 million in dividends. Citi told the IRS that it had decided not to pay withholding taxes for these swaps because the transactions were "not clustered around dividend record dates" or "generally did not appear to involve an understanding regarding delivery of the shares back to the counterparty at the inception of the trades." ²⁹⁸

Finally, Citi told the IRS that it was not identifying any transactions involving "security lending transactions, even though Citigroup also engaged in such transactions, because we believe these other transactions are not the focus of your present examination." Evidence uncovered by the Subcommittee indicates, however, that stock loan transactions have been used by U.S. financial institutions on many occasions to enable clients to dodge payment of U.S. dividend taxes.

In August 2007, Citi reported to the IRS that it had identified additional transactions that had been conducted by its Derivatives Unit in which dividends had been paid but no taxes withheld. They consisted of 15 trades, all involving Microsoft stock, which had generated \$5.7 million in dividends. 300

²⁹⁷ Id.

²⁹⁸ Td

²⁹⁹ Letter from Citigroup to the IRS (Feb. 20, 2007), Bates No. CITI_PSIWHTAX001336-39, at 1337.

³⁰⁰ Letter from Citigroup to the IRS (Aug. 24, 2007), Bates No. CITI_PSIWHTAX001455-56.

Case History Implications. The Citi case history is significant for at least three reasons. First, it provides additional evidence related to the amount of tax revenues lost due to nonpayment of dividend taxes. For a three-year period, 2003 to 2005, Citi acknowledged entering into equity swaps with non-U.S. clients tied to stock that paid dividends totaling about \$440 million.301 Normally, \$440 million in dividends paid to non-U.S. persons would generate \$50 million or more in dividend taxes depending upon whether the 15% or 30% dividend rate applied, but in these swap transactions, no dividend taxes were originally withheld on the ground that the taxable dividends had been transformed into tax-free dividend equivalents. Citi's \$24 million payment to the IRS reflected its judgment that some of the dividend equivalent payments made to clients should have been treated as taxable dividends. This total would have been higher if some of the dividend equivalent payments made in connection with some of the other troubling swaps were also subjected to withholding. The total would also have been higher had the analysis included consideration of Citi's stock loan transactions.

The Citi case history is also significant because it shows how commonplace dividend enhancement products have become. In conducting analysis for the IRS, Citi examined over 6,000 total return swap transactions from 2003 to 2005, involving U.S. dividend-paying securities and non-U.S. clients. 302 Of those 6,000 swaps, Citi subsequently paid withholding taxes on about 1,350. Citi also admitted participating in stock loan transactions tied to U.S. dividend-paying stock, but did not specify the total number of stock loans or the total amount of dividends or substitute dividend payments involved. 303 Together, the Citi documents indicate that swaps and stock loan transactions tied to dividend-paying stock are in routine use across Citi business units, are popular with clients, and serve as potential vehicles for dividend tax abuse.

³⁰¹ This \$440 million figure is derived from four figures supplied by Citi to the IRS; \$160 million in dividends paid on stocks for which Citi issued equity swaps and decided to pay withholding taxes; \$239 million in dividends paid on stocks for which Citi issued equity swaps and bought and returned stock to its clients but declined to pay withholding taxes; \$36 million in dividends paid on additional equity swaps conducted by its Equity Derivatives business unit and for which Citi declined to pay withholding taxes; and \$5.7 million in dividend-related payments in swap transaction related to the Microsoft special dividend.

³⁰² See, e.g., Form 4564 filed by Citigroup with the IRS, (Nov. 19, 2007), Bates No. CITI_PSIWHTAX001625-26 (stating Citi paid withholding tax on 1,352 total return swaps, but not on 4,720 other total return swaps); Memorandum from Citigroup to the IRS (Mar. 21, 2007), Bates No. CITI_PSIWHTAX001340-80; Memorandum from Citigroup to the IRS (Aug. 24, 2007), Bates No. CITI_PSIWHTAX001455-56.

³⁰³ Letter from Citigroup to the IRS (Feb. 20, 2007), Bates No. CITI_PSIWHTAX001336-39, at 1337.

Finally, the Citi case history makes it clear that U.S. financial institutions are aware of the tax risks associated with their participation in transactions tied to dividend-paying stock. In this instance, Citi developed tax policy guidelines in 2003 for total return swaps tied to U.S. stock because it wanted "to ensure that Citi's transactions did not come anywhere remotely close" to transactions that could be characterized as stock repurchase agreements or securities loans.304 Citi's Internal Audit Department chose to conduct a review of the bank's equity swaps and found many that failed to comply with Citi's tax policy. Citi then performed a detailed analysis of those swaps and determined that the facts were so troubling for certain swaps involving \$160 million in dividend payments, that the better course of action was for Citi to pay \$24 million in withholding taxes to the IRS.

IV. U.S. GOVERNMENT RESPONSE TO ABUSIVE DIVIDEND TAX TRANSACTIONS

The six case histories examined in this Report show that abusive dividend tax transactions first began to appear in the United States in the 1990s, and gradually expanded over the next ten years to multiple U.S. financial institutions and offshore entities. Milestones included the 1991 Treasury rule making swap payments to non-U.S. persons tax free; the 1997 IRS Notice which gave rise to new abusive stock loan transactions; the 2003 lowering of the individual U.S. dividend tax rate which encouraged U.S. firms to issue more dividends; the 2004 Microsoft special dividend which led to a burst of abusive transactions; and the development of financial instruments with features designed to disguise their objective of enabling offshore hedge funds and others to dodge U.S. dividend taxes. Using names like "dividend enhancement," "yield enhancement," and "dividend uplift," abusive dividend tax transactions have become commonplace among U.S. financial institutions and offshore clients, and continue to this day.

Many of the documents obtained by the Subcommittee show that the participating U.S. financial institutions and offshore hedge funds were well aware of the tax risks associated with their dividend-related transactions and took actions to limit their tax exposure. Some set annual monetary limits on the amount of unpaid dividends that could be associated with their transactions. Some clients obtained tax indemnity agreements. Tax experts wrote articles highlighting the problem of abusive dividend tax transactions.

³⁰³ Citi Memorandum to IRS, at 1212.

Document 808-17

Despite the pervasiveness of the problem over the last ten years, the U.S. Government has done little to stop the use of abusive dividend tax transactions. In 1997, the IRS promised to issue guidance on "how substitute dividend payments made by one foreign person to another foreign person are to be treated," but never did.

Due to their inaction on the issue of offshore dividend tax abuse, U.S. Treasury and the IRS have failed to send the signals needed to curb the development, marketing, and implementation of "dividend enhancement" transactions aimed at enabling clients to avoid payment of U.S. dividend taxes. Until U.S. Treasury and the IRS make their position known, in writing and through enforcement actions, that dividend enhancement transactions are impermissible, U.S. financial institutions will continue to offer these transactions, dividends will continue to be paid offshore under the guise of tax-free swap payments and substitute dividends, and offshore holders of U.S. securities will continue to dodge paying their fair share of taxes, leaving ordinary Americans to shoulder the U.S. tax burden.

The U.S. Treasury and the IRS can and should do more to enforce current law. First, the IRS should complete its pending review of dividend-related transactions and take civil enforcement action against delinquent taxpayers and the U.S. financial institutions that have participated in stock swap and loan transactions aimed at dodging U.S. taxes on stock dividends.

Second, to stop misuse of stock loan transactions to dodge U.S. dividend taxes, the IRS should issue a new regulation on the tax treatment of substitute dividend payments between foreign parties to make clear that inserting an offshore entity into a stock loan transaction does not eliminate U.S. tax withholding obligations.

Third, to stop misuse of equity swap transactions to dodge U.S. dividend taxes, the IRS should issue a new regulation to make dividend equivalent payments under equity swap transactions taxable to the same extent as U.S. stock dividends.

Fourth, Congress should do its part by enacting legislation making it clear that non-U.S. persons cannot avoid U.S. dividend taxes by using a swap or stock loan to disguise dividend payments. This legislation should end the abuse by eliminating the different tax rules for U.S. stock dividends, dividend equivalents, and substitute dividend payments, and making them all equally taxable in the same way as dividends. Like the U.S. Treasury and the IRS, Congress has not sent a clear signal that these abusive transactions distort the law, were never intended by the tax code, and have robbed the U.S. Treasury of tax revenues totaling billions Document 808-17

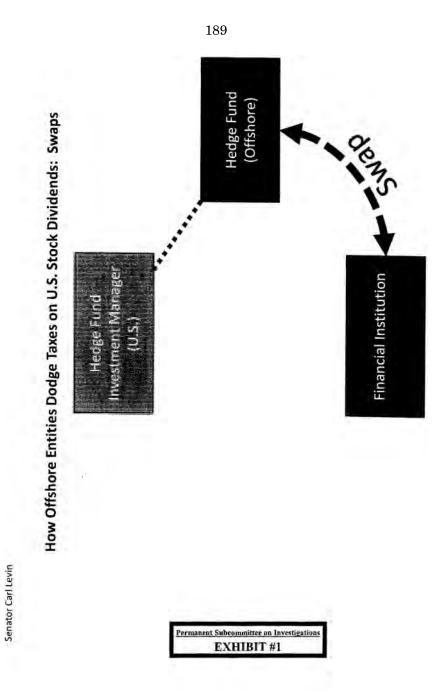
of dollars. Enactment of clarifying legislation would send a clear signal that abusive dividend tax transactions are unacceptable, strengthen the enforcement authority of the IRS, and help put an end to this particular offshore tax abuse.

ADDITIONAL MINORITY STAFF VIEWS ON THE REPORT

The factual findings presented in this bipartisan report are compelling and raise valid concerns that demonstrate the need to reevaluate the wisdom and effectiveness of certain tax laws and policies respecting the treatment of specific equity swap and loan transactions. The Subcommittee's investigation has revealed that, under specific facts and circumstances, a subset of such transactions may result in inappropriate non-payment of U.S. dividend taxes. We recognize that, for a foreign investor, there is a significant difference in the U.S. withholding tax consequences between investing synthetically through an equity swap versus investing directly in physical, U.S. equities and that this difference in treatment has led to certain abuses. There is no doubt that some institutions, in certain transactions, have pushed the taxavoidance envelope too aggressively.

We believe, however, that articulating specific legislative or regulatory responses to these abuses requires a more comprehensive and in-depth analysis than this Report provides. Experts on tax law and policy are better equipped than we to arrive at an appropriate response. In light of the Subcommittee's findings, those experts, the relevant Executive Branch agencies, and the Congressional committees of jurisdiction should engage in a deliberative process to evaluate the various possible responses and determine the most appropriate path.

Therefore, we join with the Majority in this analysis insofar as it identifies and diagnoses the problem. We strongly urge, however, that any response to these abuses be clearly defined and carefully targeted to preserve the integrity and efficiency of our capital markets, prevent negative impact on foreign investment in the United States, and avoid unintended consequences.



From: Sent: To: Subject:

veronica.willhew@ubs.com Monday, November D1, 2004 12:41 PM Michael Madalo@ubs.com; Mark.Nesen@ubs.com FW: Dividend Enhancement Flow

Attachments:

Dividend Enhancement.doc

Permanent Subcommittee on Investigations
EXHIBIT #2

UBS 000509

Dividend Enhancement
For US tecurities paying dividends, the IRS requires a 30% withholding last be levied against affiliwer entities.
This sease that a Cayman entity such as Maverost Fund UDC would only receive 70% value on their USslividends. UBS offers a product brown as "Dividend Enhancement", whereby Maverost Divide to realize a
greater portion of their dividents, and pay on amount last han 100% of a dividend, if they are close a security. It
works on the test dat UBS can get more favorable testiment data as affiliate traity and thus can put the
following arrangement to place, whereby USS passes an enhanced amount back to the client. The OSLA excessed
between Maverost UDC and USS Cayman Last governs the leading and borrowing of securities between the 2**
Caymon entities, and allows the leader to be froot from paying additional withholding. The steps are as follows:

- 1 UBS Cayman borrows the US stock from Maverick Fund UDC.
 2) UBS Cayman cascuckes a shall entitin swap with UBS AG, whereby Cayman is to "long" the returns.
 3) UBS Cayman cascuckes a shall entitin swap with UBS AG, whereby Cayman is to "long" the returns.
 4) UBS AG London creates a long basket trade (in swap form), including the security that it macrived from UBS AG London creates a long basket trade (in swap form), including the security that it macrived from UBS Cayman.
 5) UBS AG London bettle physical stock to the swap co-unterpart, as the other side of the swap travacation UBS AG London then receive returns an the swap, including 197% of the dividend; value (as a part of the swap stravacation) on the swap co-unit sour UBS Cayman, that is done by way of a samminism, it credites 197% value of such dividend.
 7) UBS Cayman passes the 90% dividend payment onto Maverick Fund LDC.

NOTE: The retionale for a Cayman registered entity to lend the applicable occurriors to UBS Cayman is doe to IRS Noise 37-66, which states that where feeting is conducted between two entities is the same journalisation, the (foreign to feeting) payeemen of the "but dividence" will not be eablyer to US withholding stat. If a Cayman entity singly test the stock to UBS London, for instance, that sold dividend, due back it the Cayman entity, would be subject to US withholding stat. The art of the sold of the divident flux ages passed to the lender, at opposed to the two divident flux is paid to the holder of record. This rate was count by the IRS in 1997, and Paire Webbs received as upsting, from external counterf, Cabill Gordan, data to US withholding would be applicable, bence the introduction of the Paine Webbs Cayman brooch, and Dividend Enhancement as a product.

At the expiration of the transaction UBS AG London purchases the stock, in the market, in the name of UBS Cayman, The stock is then returned to Maverick Fund LDC, and the transaction is closed.

The trade is executed as dividend date, and the tour stays upon for a minimum of 10 days, and a maximum of 45 days. Generally however these trianscition have 10-day materities. The mock horson is done at 100%, i.e. there is an margining or harmstring of the each or securities, and 100% Cayman gives 100% of the each value to Maveriell as collatered on these trades.

Mark to Market & Thresholds:
The Chest Integration Team mention the value of the securities borrowed against the loan, and only ould or pay
collisared on the basics of a \$5.5 million collisared threshold. This limit was approved at the inception of likebasicses, by CRC within 1015 Financial Services, formerly PanerWebber. All stock loss expussives are reported in
and involuted within the Credit Engine system.

The URS Swaps both between URS AG Landou and URS Cayman as well at the one between URS AG Landou and the stock constraint, are booked in WISDOM, which feels GEROHRIO. It should be loosed that the away part of this transaction to end exposure to Maverick, and thus are not seen which the credit systems. Rather day are URS internal and external francactions enabling us to facilitate Maverick's requirements.

URS Group – Approvals

This product was approved by the UBSW Executive Committee in March 2002 and Group Tax in May 2002.

An Overseas Sociation Lending Agreement ('OSLA') needs to be executed for this product, between Mavestick LDC and UBS Cayman LM. Alas, an approval is required for this product when it is first approved for any given claim. However all hards thereaften are subject to a bladest approve

The majority of dividend enhancement dramacrions are done with Maverick LDC, while occasionally a trade will be done with Maverick IL Limits and expansars are noninered in the PaineWelther Cayman module of the Credit Engine. For LDC, Volume exposure arounds to CHF 735 mio while risk exposure in CHF 935 mio as of Apr 23. 2004. These transactions take place over dividend proment period, which is quarterly in the US, and spready later for me mouth and a few days. The tense of the trade is short, and exposure instally drops significantly after the first models. Below see leading task and volume limits are recommended to cover the dividend enhancement trade:

Confidential Treatment Requested

UBS 000510

Level Opinion

Alternative Transactions

It could be argued that a sweep provides the same kenefit in that the returns, to a client, will include the dividend value; therefore what would the retionale be for entering into the aforementioned convoluted curvature? A Total Return Sweep can often be used, and instead is. However if a find that underlying investors that may suffer capital gains (CCCT) consequences, if the underlying stock is sold, a Total Return Sweep cannot be used. To execute the Sweep, the stock needs to be sold as a hodge, thus the sale may attract CCT, possibly negating the dividend withholding gain. For this reason, many Cayrean based funds use the Dividend Enhancement trades, versus Sweep, as a believe these benefits.

Confidential Treatment Requested

UBS 000511

April 22, 1999

DRAFT - AS OF 4/26/99

Maverick Fund, LDC File

Mayerick Fund II, Ltd. File

From: Keith Hennington

Dividend Enhancement Transactions

Mayerick is the advisor for several offshore funds that are having taxes withheld on dividends received from United States companies. Morgan Stanley has approached us about entering into stock loan agreements that would minimize the adverse effects of U.S. withholding.

Stock Loan

Our Cayman Islands funds would enter into a stock loan on each U.S. security that is scheduled to pay a dividend. We would loan the security to a Cayman Morgan Stanley entity. They would pay us an amount equal to 70% of the dividend paid on that security (dividend entitlement). They would also pay us a stock loan fee equal to 13% of the dividend. This stock loan fee is negotiable. The end result would be that we would receive 83% of the dividend instead of the normal 70%. Morgan will then enter into a swap with a U.S. counterparty. They are taking the position that all payments under the swap are not subject to withholding. This removes the dividend from the U.S. without subjecting it to any withholding.

U.S. withholding taxes on dividend entitlement

Morgan is relying on Notice 97-66 to avoid withholding on the dividend entitlement. The premise of this Notice is that withholding is required on substitute dividend payments between foreign entities only if the foreign payor's U.S. withholding tax rate is lower than the payee's U.S. withholding tax rate. Since both the payor and payee in our transaction are Cayman entities subject to the same rate, there is presumably no withholding on the payment. This notice is designed to ensure that the appropriate U.S. tax is withheld but that it is only withheld once.

Notice 97-66 addresses a situation where all links in a chain of transactions are securities loans. It does not address a situation where one of the links is a swap. As mentioned above, this Notice assumes there is withholding at some point in the chain. It specifically states that "to the extent a foreign-to-foreign securities loan or sale-repurchase transaction would reduce U.S. withholding tax, an incremental amount of U.S. withholding tax is imposed on the substitute payment." When compared to a direct loan to a U.S. entity, this transaction reduces the U.S. withholding tax. However, we could argue that the swap

> Permanent Subcommittee on Investigations EXHIBIT #3

MAV0001082 CONFIDENTIAL does not reduce the U.S. withholding because there would be no withholding if we had done the swap directly with a U.S. counterparty. Assuming the swap is not subject to withholding, the Service has not been harmed by the additional step of a foreign-to-foreign securities loan. The Notice appears to disregard the foreign-to-foreign loan when determining if U.S. withholding has been reduced because it states that "no withholding tax is required in situations where transactions are entered into between residents of the same country." It is the swap and not the loan that reduces the U.S. withholding so the exposure lies with that transaction, not the foreign to foreign loan.

Under this analysis, the foreign lender of the securities appears to have very little U.S. tax exposure. Even if there were exposure, the Service would look to the U.S. withholding agent for the payment of the withholding instead of the foreign lender. The withholding structure was set up to provide a means of collecting U.S. tax without involving the foreign entity ultimately liable for the tax. I am more worried about limiting Morgan's ability to come to us for reimbursement of the tax if the Service later rules that withholding should have taken place at some point in the chain. Their right to reimbursement is part of our contractual arrangement with them and should be clearly addressed in any written agreement with them. I think the attorneys should review any agreements we enter into on this transaction. I doubt the standard loan documentation will address the tax issues related to this transaction. Side letters may be required.

U.S. withholding on stock loan fee

The stock loan fee will be paid from one foreign entity to another. This fee should not be U.S. source income unless it is somehow classified as a substitute dividend payment. Once again, if the analysis above is correct, the stock loan should not create substitute dividends

Source of income

The dividend entitlement will be U.S. source since the security is a U.S. security. The stock loan fee should be a foreign source income since both the payor and payee are foreign.

Total Return Swaps

I will get several quotes on the cost of entering into swaps. I have talked to Paine Webber and Deutsche Bank. They are estimating that we would receive approximately 93% of dividends after expenses of the swap. They are sending us more detailed information. It sounded like the swaps would be much more difficult to manage and we would lose some of the flexibility we would have with the stock loan transaction. I plan to focus on the stock loan transaction unless we feel there is too much tax exposure. The additional 10% enhancement is probably not worth the additional administrative burden at this point.

MAV0001083 CONFIDENTIAL December 12, 2005

Description of Dividend Enhancement Transactions

Maverick is the advisor for several offshore funds that currently participate in stock lending transactions. One of the benefits of these transactions is that U.S. and Foreign tax withholding may be reduced. The details of a typical U.S. dividend enhancement transaction are described

- (1) Cayman Islands hedge fund ("Fund") lends U.S. security to a Cayman Islands prime broker ("PB") pursuant to a conventional securities lending agreement. The loan occurs prior to the dividend record date.
- (2) PB posts equity collateral in exchange for the security. The term of the loan is flexible but historically has been greater than 30 days for domestic enhancements. Beginning in 2006, Fund began using a different PB for domestic enhancements and, consequently, the majority of its new securities loans have had a term less than 30 days. The security may be recalled at any time for regular settlement. Early recall may result in a fee payable by
- (3) PB typically enters into an equity swap with a U.S. counterparty, but has no contractual obligation with Fund to do so. PB takes the position that all payments received in connection with the swap are not subject to U.S. tax withholding.
- (4) At the end of the term, PB pays a fee to Fund equal to a percentage of the dividend. The fee is negotiable and has historically been in the neighborhood of 85% to 97% of the dividend.

Mayerick began using the dividend enhancement transaction in 1999. During that time, Maverick has done this transaction with Morgan Stanley, UBS, Lehman, Merrill Lynch, and ING.

U.S. Tax Implications of Enhancement Transactions

Maverick and its PB's currently rely on IRS Notice 97-66 to avoid withholding on its dividend enhancement transactions. The premise of the notice is that withholding is required on substitute dividend payments between foreign entities only if the foreign payor's U.S. withholding tax rate is lower than the payee's U.S. withholding tax rate. Since both the payor and the payee in our transaction are Cayman entities subject to the same withholding rate, there is presumably no withholding on the payment from PB to Fund. This notice is designed to ensure that the appropriate U.S. tax is withheld but that it is only withheld once.

It should be noted that Notice 97-66 addresses a situation where all links in a chain of transactions are securities loans. It does not address a situation where one of the links is a swap. As mentioned above, Notice 97-66 assumes there is withholding at some point in the chain. It specifically states that "to the extent a foreign-to-foreign securities loan or sale-repurchase transaction would reduce U.S. withholding tax, an incremental amount of U.S. withholding tax is imposed on the substitute payment." When compared to a direct loan to a U.S. entity, this transaction reduces the U.S. withholding tax. However, Fund could choose to enter into a swap with a U.S. counterparty and avoid U.S. tax withholding. Under Regulation section §1.863-7(b)(1), "the source of notional principal contract income shall be determined by reference to the

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December 12, 2006

residence of the taxpayer" who is the direct recipient of the income. Therefore, periodic or nonperiodic payments received by a foreign person are not subject to U.S. withholding tax as long as the foreign person is not otherwise engaged in a U.S. trade or business. Consequently, Fund's use of a securities loan transaction does not reduce the U.S. tax withholding in this situation because there would have been no withholding if Maverick had entered into the swap directly with a U.S. counterparty. Assuming the swap income is not subject to U.S. withholding tax, the Service has not been harmed by the additional step of a foreign-to-foreign securities loan.

Notice 97-66 appears to disregard the foreign-to-foreign loan when determining if U.S. withholding has been reduced because it states that "no withholding tax is required in situations where transactions are entered into between residents of the same country." It is the swap transaction and not the loan that reduces the U.S. withholding tax so the exposure lies with that transaction, not the foreign-to-foreign loan. In fact, Maverick's research indicates that the Service has considered whether the scope of the proposed regulations should apply to dividend equivalent payments made in connection with notional principal contracts, such as an equity index swap structured to replicate the cash flows that would arise from an installment purchase of one or more equity securities. Perhaps one reason the Service has not acted on this matter is because notional principal contracts typically settle on a net basis and, consequently, there would be a possibility that any applicable withholding tax (calculated on a gross income basis) could exceed the net economic benefit that the transaction would ultimately yield.

Since PB is a foreign party, the stock loan fee received from PB will not be U.S. source income If the analysis above is correct, the stock loan should not create substitute dividends.

Foreign Tax Implications of Enhancement Transactions

Mayerick has also entered into transactions similar to that described above to enhance foreign dividends. Foreign enhancements have not historically been as large as those on the domestic side. Tax laws in each applicable foreign jurisdiction can warrant slight adjustments to the transaction described above but the same general structure is utilized. The obvious difference between a U.S. and Foreign enhancement is that the PB would not need to be a Cayman entity. Also, depending on the jurisdiction, the PB could opt to use a back-to-back stock loan rather than the swap transaction to achieve the desired tax result in that jurisdiction.

Mayerick has worked with outside counsel to determine that its dividend enhancement procedures would more likely than not be upheld in the various foreign jurisdictions in which Mayerick held securities.

Conclusion

Maverick has concluded that the position described above has a greater than 50% chance of being sustained were it to be reviewed by the Service. There could be some business risk associated with the transaction if it is ever determined that there should have been U.S. tax withholding on the swap transaction presumably entered into by PB. If that were to occur, the PB might be able to seek reimbursement from the funds pursuant to the contractual agreement in place with them at that time

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Maverick Capital Dividend Enhancement Transactions Memo 6/30/05

Domestic Securities - Long

This memo is being written to document our understanding of the dividend enhancement transactions that Maverick Fund II, Ltd. and Maverick Fund LDC (the funds) participate in with Paine Webber-London (PW)

Dividend enhancement on long securities is designed to gross up the funds' dividends received from U.S. based companies by transferring the shares owned in the funds to PW, a U.S. based entity, therefore causing there to be no dividend withholding taxes

Transaction

When a U.S. based company, in which the funds own shares, declares a dividend the funds lend their shares to PW in exchange for collateral, which is defined by the agreement to be cash, U.S. treasuries, or a letter of credit in an amount equal to at least 100% of the market value of the securities lent.

A loan is initiated approximately 3 days before the ex-dividend date, allowing time for the transaction to settle and the shares to be registered to PW before the dividend ex-date, and is terminated approximately 30 days after the payment of the dividend. Upon termination of the loan agreement, the shares and the dividend are returned to the funds and the funds return the collateral to PW.

It is also noted that at anytime during this loan period Maverick may still sell the position that is on loan, the only consequence of this sell would be that PW would charge a larger percentage of the dividend for the facilitation of this transaction.

Example of a dividend enhancement transaction and applicable entries:

January 1, 2005 the funds purchase 10,000 shares of IBM at \$100/share with 50% of the purchase on margin at 5% interest. January 6, 2005 IBM declares a \$1/share cash dividend with an ex-dividend date of January 15, 2005.

Purchase date entry:

DR. Investment in IBM \$1,000,000 \$500,000 CR: Cash CR. Margin Debt \$500,000

Transfer Date, January 10, 2005:

· Client does not make an entry on their books to account for the transfer of shares to PW; however the client surrenders the 10,000 shares to PW and PW remits to the client \$1,000,000.

> Permanent Subcommittee on Investigations **EXHIBIT #5**

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- . Note that Maverick still has a \$500,000 margin loan from PW at this time and therefore is still account interest expense.
- . Note that Maverick still has control of the investment and can sell the investment before the return of the shares but would incur a larger charge from PW.

Date of return of shares, February 15, 2005:

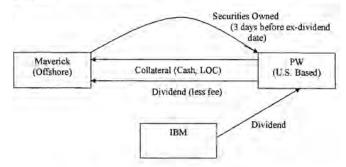
· Client does not make an entry on their books for the return of the shares, but makes the following entry for revenues from dividend:

DR. Cash CR. Dividend revenue \$7,000 CR. Int. Income - Stock loan \$2,000

 Note that this entry is to achieve the recognition of income from both the dividend declared by the U.S. company and the interest income on the stock loan netted against an approximate 10% transaction charge by PW.

Accounting Treatment

Currently, Maverick is including the shares exchanged with PW related to these transactions in their share register causing the applicable cash held to be classified as securities.



Domestic Securities - Short

Dividend enhancement on short securities held in Fund II and LDC is designed to decrease the amount of dividends paid on short domestic securities from 100% to 97%. Maverick transfers cash to PW, a U.S. based entity, to cover its short position, which results in a dividend enhancement receivable balance during the enhancement period. As is the case for long securities enhanced, Maverick makes no changes to its cash of position balances during the enhancement period. Rather, a receivable is booked at month end.

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Upon completion of the enhancement period (generally 2 -4 weeks), PW returns the cash collateral to Maverick and the short position to Maverick's brokerage account.

Foreign Securities

Dividend enhancements on foreign securities are handled by Lehman Brothers (LB). When a foreign security is enhanced, Maverick lends the security to LB and receives cash collateral equal to the market value of the security. Upon completion of the enhancement period, the % of dividend paid to Maverick depends upon the circumstances surrounding the transaction such as demand for the security. LB returns the securities to Maverick and Maverick pays the cash collateral to LB. LB then pays Maverick the dividend less fees.

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CN=Keith Hennington/O=Maverick

From: CN=Keith Hennington/O=Maverick 11/11/2004 11:37:00 AM

Sent:

ON=Shari Robertson/O=Maverick@maverickcap
Re: Fw: Microsoft strategy on capturing the \$3.00 dividend for non-US holders only.

agree - Joe, Jim, and I looked at alternatives on this a couple of weeks ago. Joe and Jim found the best deal through stock loan. We also thought any special transactions on large dividends might stand out and the IRS might stant. looking at any transactions in MSFT. Stock loan seemed like the more conservative approach.

Shari Robertson/Maverick 11/11/2004 10:01 AM

Keith Hennington/Maverick@maverickcap

Subject

Fw: Microsoft strategy on capturing the \$3.00 dividend for non-US holders only.

The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. This message may be an attorney-client communication and as such is privileged and may be an attorney-client communication and as such is privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying if this message is strictly prohibited. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.

****************************** - Forwarded by Shari Robertson/Maverick on 11/11/2004 10:01 AM ----

Joseph Manogue/Maverick 11/11/2004 10:00 AM

Shari Robertson/Maverick@maverickcap

Jim Chen/Maverick@maverickcap

Fw: Microsoft strategy on capturing the \$3.00 dividend for non-US holders only.

Permanent Subcommittee on Investigation EXHIBIT #6

MAV0003248 CONFIDENTIAL

The strategy forwarded to you requires we sell our stock and buy call options and get 93% of the dividend.

Jim has been working on this for the last 2 months and he got UBS to match the more aggressive offers we were getting from the Street, For LDC only – we lens the stock out and will get 97% of the dividend.

— Forwarded by Joseph Manogua/Maverick on 11/11/2004 09:56 AM —

Shari Robertson/Maverick 11/11/2004 09:49 AM

Joseph Manogue/Maverick@maverickcap

Subject

Fw: Microsoft strategy on capturing the \$3,00 dividend for non-US holders only,

--- Forwarded by Shari Robertson/Maverick on 11/11/2004 09:49 AM ----

mboucher@CandW.ky 11/11/2004 09:11 AM

To shari.robertson@mayerickcap.com

Subject

Fw: Microsoft strategy on capturing the \$3.00 dividend for non-US holders only,

just passing this along....,let me know if the attachments make it, if not I'll resend it later when I get back in the office

"Blair Gauld" < bgauld@queensgate.com.ky> wrote:

> Nick Walker contacted me this morning after he had noted that Maverick holds

> significant amount of Microsoft shares and that Microsoft had just declared

> large dividend. He has a strategy that he has used in the past to avoid a > large part of the withholding tax associated with US dividends. He asked me

MAV0003249 CONFIDENTIAL

<MSFT .doc was removed>

MAV0003250 CONFIDENTIAL

CN=Chad Chisolm/O=Maverick

From: CN=Chad Chisolm/(D=Maverick Sent: 6/1/2007 4:31:59 PM To: CN=Jeffrey Ligotit/(D=Maverick@maverickcap Fw: FIN 48 Tax Positions - DRAFT memos

--- Forwarded by Chad Chisolin/Maverick on 06/01/2007 03:31 PM ---

debra.taylor@ey.com 06/01/2007 03:27 PM

Chad.Chisoim@maverickcap.com joseph.bianco@ey.com

Subject Re: Fw: FIN 48 Tax Positions - DRAFT memos

Chad,

We'll look into this and get back to you at the beginning of the week.

Debra F. Taylor International Tax Consulting NY Financial Services Office 212-773-2978 Phone 866-244-5265 Fax debra.taylor@ey.com

Chad, Chisolm@maverickcap.com 06/01/2007 03:57 PM

Joseph.blanco@ey.com cc debra.taylor@ey.com Subject
Re: Fw: FIN 48 Tax Positions - DRAFT memos

> Permanent Subcommittee on Investigations EXHIBIT #7

MAV0001115 CONFIDENTIAL

Joe,

Now that 6/15 is approaching, we are considering whether we need to go ahead and remit the 2006 income tax withholding that we accrued for FIN 48 purposes in connection with the stock loan fee income earned during 2006. Recall that Goldman withholds U.S. taxes on these transactions but our other brokers typically do not. We determined in December that we should probably accrue these taxes even though nothing is actually withheld by our other brokers. We will need to address whether or not to pay these taxes for pre-2006 years whenever we file protective returns for those years. As for the 2006 tax year, we will likely be filing a return for each of our foreign funds (extension due 6/15) that is treated as a corporation for U.S. tax ourposes. My question to you is how/if we should remit these taxes given that the brokers did not deem these as subject to withholding and thus did not provide a 10425 to these entities.

We need to know what to do very soon as the 6/15 deadline is approaching.

Thanks.

Joseph.bianco@ey.com

jbseph.blanco@ey.com 12/22/2006 01:35 PM

To

keith.hennington@maverickcap.com

Chad. Chisolm@maverickcap.com, keith_hennington@maverickcap.com, michelle.perrin@maverickcap.com, steven.menna@ey.com, Suzanne.Guthrie@maverickcap.com, Vahan.Zerounian@ey.com

Subject

Re: Fw: FIN 48 Tax Positions - DRAFT memos

I think that with that we should be good for 2006 - no need to talk further if interest, penalties, foreign issue turn out immaterial as you believe. Can follow up re 2007 after New Year. If we need to discuss next week - try me on

Reducted by the Permanent Subcommittee on Investigations

MAV0001116 CONFIDENTIAL

Happy holidays to everyone.

Regards,

Joseph Bianco 212-773-3807 - direct 212-773-7142 - fax 866-241-8999 - efax joseph.bianco@ey.com - email keith.hennington@maverickcap.com 12/22/2006 02:21 PM

joseph.blanco@ey.com

Jacquisonnemaverickcap.com, kelth_hennington@maverickcap.com, setven.menna@ey.com, Vahan.Zerounian@ey.com, michelle.pernn@mavenckcap.com, Suzanne.Gutthrle@maverickcap.com Subject Re: Fw: FIN 48 Tax Positions - DRAFT memos

Joe,

My main concern is that we have a firm agreement by the end of next week on how to treat these transactions in the 2006 financials. As Steve will tell you we like to have these things nailed down before the actual audit takes place. To the extent that we need to have a call to discuss I am available at any time next week. Here is where I think we are at this point.

Borrow fee - I agree with Matt's points and will do the following:

For 2006 - We will also compute interest and penalties on the amount we have accrued. I doubt it will be material but if it is then we should add to the liability. We will compute this by Wednesday of next week.

For 2007 - We should analyze the possibility of paying the liability that we have already accrued and withholding on future payments.

Stock loan transaction

For 2006 - It appears that we are in agreement that we have met the 50% threshold (at least for US securities). I don't want to assume too much so can you confirm that EY is in agreement with that conclusion.

I believe that the foreign transactions are immaterial but we can quantify the

For 2007 -1 would be interested to hear how Matt's analysis differs from ours.

MAV0001117 CONFIDENTIAL

We might also incorporate his views into our documentation. We will also file protective returns so that the statute begins.

Thanks,

Keith joseph.bianco@ey.com

joseph.bianco@ey.com

joseph.bianco@ey.com

12/22/2006 08:31 AM

To

stever.menna@ey.com, keith_hennington@maverickcap.com,

Chad_Chisolm@maverickcap.com

CC

Vahan.Zerounian@ey.com

Subject

Fw: FIN 48 Tax Positions - DRAFT memos

Please see below for comments - let me know if you would like to discuss further.

Regards,
Joe

Joseph Blanco

212-773-7342 - fax

866-241-8999 - direct

212-773-7342 - fax

866-241-8999 - direct

212-773-7142 - fax

866-241-8999 - diax

Joseph.bianco@ey.com - email

— Forwarded by Joseph Blanco/NewYork/TaX/EYILP/US on 12/22/2006 09:34 AM

Matthew Blum/NATL/TaX/EYILP/US

12/22/2006 07:10 AM

To Joseph Bianco/NewYork/TAX/EYLLP/US@EY-NAmerica cc

> MAV0001118 CONFIDENTIAL

Debra F. Taylor/NewYork/TAX/EYLLP/US@EY-NAmerica, Howard Leventhal/Cons/TAX/EYLLP/US@EY-NAmerica, David A. Golden/National/TAX/EYLLP/US@EY-NAmerica Subject Re; FW: FIN 48 Tax Positions - DRAFT memosLink

As to the borrow fee issue, keep in mind that there are two sets of

Joe,

As to the borrow tee issue, keep in mind that there are two sess of inabilities: (a) prime broker has to withhold tax (Section 1442), and (b) Maverick has to pay tax (section 881). Maverick can credit withholding done by the prime broker against Maverick's own tax liability. If the prime broker the prime broker can go after Maverick for contribution or indemnification — complex point if the contract is silent. But if the IRS figures out what is going on, the IRS car bypass the prime broker and go straight after Maverick for failure to pay tax imposed under Section 881. The only limit is that the IRS may not collect the tax twice. Has Maverick considered filing for the back years to enhance chances of getting any penalties abated and put the issue to rest? Also, don't we have to think about interest/penalty accruals for amounts that were not withheld upon, since if the prime broker didn't withhold, Maverick should have paid? In the prime broker didn't withhold, Maverick should have paid? In the the most of the come out to the words, Maverick has duly noted the ferocity of the dog, but has not acknowledged the need to beware of the owner as well.

As to the dividend planning issue, my analysis doesn't work quite the same way, but I think I come out to the same place on the U.S. side — I can accept the client's assertion that > 50% chance of succeeding if transaction properly structured. We definitely should talk about what we want to see, not being an auditor, this is rather novel territory to me. As to transactions like this using foreign securities, I would think, in my naïve, non-auditor mindset, that the first order of business is to determine whether amounts at stake are material, and, if so, consult foreign colleagues.

material, and, if so, consult foreign colleagues.
Glad to discuss further, although I will leave on vacation tomorrow and not return until Wednesday, January 10.

Matt Blum
Ernst & Young/International Tax Services
Boston
Phone: (617) 859-5040
Cell: (617) 642-7955
Fax: (866) 211-4729 (U.S. only), (516) 213-8845 (worldwide)
EYCONN: 2636040
Ernalt: matt.blum@ey.com
Administrative assistant: Roslyn Guy (617) 570-8485

12/21/2006 07:08 PM

Joseph Bianco/NewYork/TAX/EYLLP/US

Best regards.

To Debra F, Taylor/NewYork/TAX/EYLLP/US@EY-NAmerica cc Howard Leventhal/Cons/TAX/EYLLP/US@EY-NAmerica, Matthew

MAV0001119 CONFIDENTIAL

Blum/NATL/TAX/EYLLP/US@EY-NAmerica Subject Fw: FIN 48 Tax Positions - DRAFT memos.

Deb:

This is what I have discussed with Maverick re FIN 48 - see attached for their write-ups. Would love to get your quick toughts - they are looking for general agreement as soon as possible. I think generally we should be ok getting to more likely than not on these - please let me know asap if you have any strong concerns.

Thanks, Joe.

Howard/Matt - curious your general comments as well and wanted to share one clients documentation around FIN 48 for your thoughts as well.

Joe

Joseph Blanco 212-773-3807 - direct 212-773-7142 - fax

Chad.Chisolm@maverickcap.com

12/13/2006 12:13 PM

joseph.bianco@ey.com, steven.menna@ey.com joseph.tepfer@ey.com, Vahan.Zerounian@ey.com, keith.hennington@maverickcap.com, michelle.perrin@maverickcap.com, Jeffrey.Liggitt@Maverickcap.com Subject FIN 48 Tax Positions - DRAFT memos

Hello.

We have completed draft FIN 48 memorandums summarizing our historical and prospective positions on the dividend enhancement transaction and the stock loan fee withholding issue for our offshore funds. Please review at your earliest convenience as we would like to complete this analysis before the

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holidays.

Thanks.

(See attached file: Description of Dividend Enhancement Transactions - for EY.doc)(See attached file: Stock Loan Fee - TEFRA Accrual (for FIN 48) - for EY.doc)

C. Chad Chisolm Mayerick Capital Tax Manager E-mail: chad_chisolm@maverickcap.com Phone: 214-880-4064 Fax: 214-880-4159

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<Description of Dividend Enhancement Transactions - for EY.doc was removed> <Stock Loan Fee - TEFRA Accrual (for FIN 48) - for EY.doc was removed>

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CN=Jeffrey Liggitt/O=Maverick

From:

Sent: To: Cc:

CN=Jeffrey Liggitt/O=Maverick 2/21/2007 5:01:49 PM Steve Boliess@ey.com Chad.Chisolm@maverickcap.com; "Shaheda Patel" <Shaheda Patel@ev.com:

Subject: Re: AMTD Dividend

No, it is from an arrangement with a broker where they hold our shares in their name when the dividend is paid so they do not have to withhold tax due to Levered's foreign ownership.

Steve.Bokiess@ev.com 02/21/2007 03:52 PM

To Jeffrey.Liggitt@Mavenckcap.com

cc Chad,Chisolm@maverickcap.com, "Shaheda Patel" <Shaheda.Patel@ey.com>, Steve.Bokiess@ey.com Subject

Re: AMTD Dividend

Are you receiving the "dividend" as a swap payment

Steven J. Bokiess Ernst & Young, LLP Sears Tower 233 South Wacker Drive Chicago, IL 60606-6301 Phone: 312-879-6560 Fax: 866-751-482 E-Mail: steve.bokiess@ey.com

Jeffrey,Liggitt@Maverickcap.com 02/21/2007 12:02 PM

To "Steve Bokless" <steve.bokless@ey.com>

cc
"Shaheda Patel" <Shaheda.Patel@ey.com> , Chad.Chisolm@maverickcap.com

Subject AMTD Dividend

Permanent Subcommittee on Investigations EXHIBIT #8

MAV0001413 CONFIDENTIAL Hello -

We have an issue we wanted to run by you regarding a dividend received in Maverick Fund II, Ltd. (Levered).

In 2006, Levered received a \$5 payment from AMTD which was classified as 50% dividend and 50% return of capital based on AMTD's calculations. Levered enhanced this dividend so all it was treated as substitute dividend. We were wondering if you know of any way that we could treat some of the enhanced dividend as return of capital instead of ordinary income (since it was a sub dividend). We have not found anything that would suggest such treatment but it could be quite beneficial from a tax perspective if we could justify a return of capital treatment.

Any thoughts?

Jeffrey Liggitt Maverick Capital, Ltd. 300 Crescent Court, 18th Floor Dallas, TX 75201 Phone: (214) 880-4025 Fax: (214) 880-4159

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Domestic Dividend Enhancements

1. General

Current domestic dividend enhancements are done at UBS PaineWebber. Stocks are borrowed from our account a Current admission derivation confidence and the deviation of the dividend. UBS does a swap on their side with a third party to be held for 30 days. Maverick is able to freely sell the stock during this 30-day period, but any sale made reduces the stock loan interest from 90% of gross dividends to 85%. The 5% reduction is used to cover costs, associated with UBS borrowing other shares in cover our sale. Cost for sales are now the borrow costs of the securities sold (Market value * 40bps * # of days until swap termination / 360).

2. Financing

When UBS borrows stocks set for enhancement, they replace them with each collateral that is equivalent to the market value of the stocks. A separate spreadsheet is prepared by Leon Garry (212-713-7863) to track the each collateral per stock per fund. This spreadsheet is also used to calculate the margin interest expense associated with

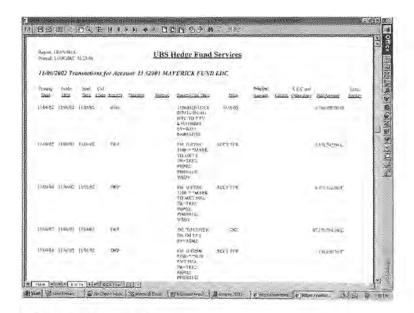
Leon will need instructions on where to send the collateral funds. The funds must be sent to an offshore primebroker account to keep this an offshore transaction. Currently, the options are UBS London (16USD1), Goldman London (17USD1), Lehman Brothers (18USD1), or Barclays Bank (20USD1 – not the Bank of New York: instructions). Where to send the collateral depends on actual debit balances versus debit balance goals set on the daily PB report. Some juggling may be needed to keep everyone in a debit balance.

Book the collateral wires as eash transfers from UBS PaineWebber New York even though no eash is sent from there (This creates a rec. item on the cash rec.) The wires are actually sent from UBS Cayman, but since it's a shortterm loan and not our money, we just treat it as a rec. item.

The sale of an enhancement stock or a mark to market on the value of the outstanding borrows are the two ways The sale of an emacement success, or a mark to market of the value of the obligational control control collateral can change. They are booked on the UBS report as either a partial return (PRTN COLL PHA) or a mark to market (Mark to MKT C) as shown below. Adjust current dividend rec. items by adding the collateral returned for partial returns, adding the collateral returned for negative marks to market, or by subtracting the additional collateral for positive marks to market. Make sure to adjust the specific rec. line that includes the stock. For instance: "PT RTN COLL PHA" would create an adjustment of positive \$55,955,964 to the line rec. item which includes PHA. It would be titled "Dividend enhancements PHA, MO" or something similar. Make sure to adjust the amount, not type over it,



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3. Month-end margin interest accruals.

At each month-end, there is an accrual booked for the cumulated margin interest expense derived from the collateral loan. Lean will email the accruals upon request. Make sure the fed funds open rates used are correct. Add the cumulated margin interest for all outstanding dividend enhancements. Book the amounts in the following entry in Total return: IM2.20 IMO

700042 Margin interest expense 310110 Margin interest payable XXXX XXXX

Ref: Margin interest-dvd enhance

Put all the support in the month-end UBS folder.

4. Booking dividentls.

UBS books two entries when dividends are paid. The first entry is the margin interest expense labeled "PNT PWCAYMAN PHA" in the printout above. This amount is the total margin interest due for the collateral loan of PHA during the entire holding period. Leon will send an email for the calculation support. Remember that part of the interest has already been recorded, so only the portion of new interest should be booked against margin interest expense, the reversal of the interest payable, and the credit to UBS cash. The reversal of interest payable will be the amount accrued in the previous month-end. The amount will be on the interest sheet in the previous month-end UBS cash folder

Example: IM2.20 IMO - PHA is enhanced and shares are borrowed on 10/15. From 10/15 to 10/31 interest accrued amounts to \$30,000. On 10/31, \$30,000 would be booked in Tond Return as a credit to 110110 (margin interest payable) and \$30,000 would be booked as a debit to 700042 (margin interest

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expense). Then on 11/15, the shares and loan are returned and UBS charges us the total margin interest amount of \$50,000. \$50,000 would be a credit to UBS cash, \$30,000 would be a debit to margin interest payable, and \$20,000 would be a debit to margin interest expense.

700042 Margin interest expense 310110 Margin interest payable 13USD UBS Cash 20,000 (additional interest expense not accused) 30,000 (amount accused previous month-end) 50,000 (total interest expense)

Ref: PHA mrgn int exp

The second entry UBS books is labeled "SUB PMT PHA." This amount will either be equal to 90% or 85% of the total gross dividend. 70% of the gross dividend will be booked as a regular dividend ("gross" with zero withholding –no tax was actually withheld) in Total Return. The other transaction in Total Return will be interest on stock loan (600021). The amount booked will either be 15% or 20% of the gross dividend depending if there was a stock sale or not. The two Total Return transactions should add up to the amount UBS pays.

Example: On 10/15, PHA is enhanced with 1,000,000 shares with a gross dividend rate of .10. No shares were sold during the enhancement period. On 11/15, shares are returned and UBS credits our account with \$90,000. \$70,000 (70% of gross \$100,000) would be booked as a regular dividend with no withholding tax. \$20,000 (20% of gross \$100,000) would be booked as interest on stock loan.

Sometimes not all the shares we hold get enhanced, so there could be a dividend paid outside the enhancement along with the dividend enhancement. In these cases, interest on stock loan is not affected, but the regular dividend entry is modified.

Example: On 10/15, PHA is enhanced with 1,000,000 shares with a gross dividend rate of .10. 100,000 shares were outside of the enhancement on the night before ex-date. On the pay date of the dividend, UBS credits our account \$10,000 for the gross dividend and debits our account \$3,000 for the tax withholding (assuming LDC, Fund II will have a withholding rate of about 22%.) On 11/15, shares are returned and UBS credits our account with \$90,000 (no shares were sold). This time, the regular dividend entry will be different. \$80,000 (70% of gross \$100,000 plus 100% of gross \$10,000) would be booked as a regular dividend with \$3,000 withholding tax. The interest on stock loan entry would stay the same... no additional shares were enhanced.

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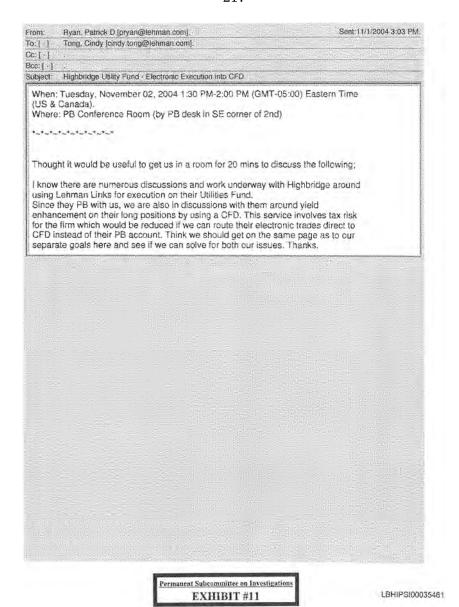
EXCERPTS FROM UBS DOCUMENTS

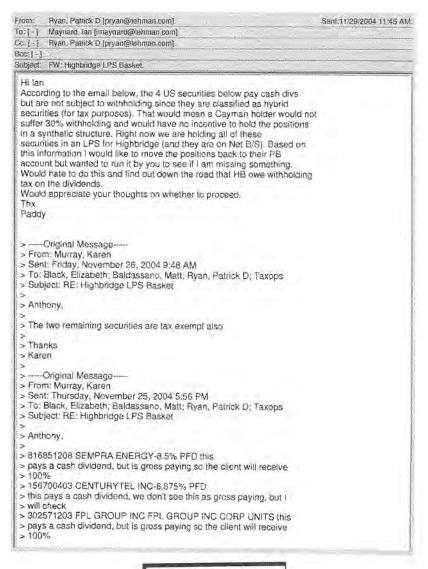
enhancement for the firm's hedge fund clients, and in 2001 added short "UBS Cayman Ltd. Was formed in 1999 to facilitate long dividend dividend enhancement services. UBS Cayman Ltd Capital Request ~ Request for Circular GEB Approval

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EXHIBIT #10

Footnote 4 at page 4 of "technical analysis" prepared, at UBS's request, by Sullivan & Cromwell LLP and provided to the Internal Revenue Service [No Date Provided] UBS 000474





Permanent Subcommittee on Investigations

EXHIBIT #12

```
> 370442717 GENERAL MOTORS CORP-6.25% PF this
> pays a cash dividend, we don't see this as gross paying, but I will
> check
> 156700AH9 CENTURYTEL INC CTL 4 3/4 08/01/32
> this is a bond - it pays interest. The client will receive 100%
> I'll advise on the two outstanding tomorrow as I need to check this
> with someone in NY
> Thanks
> Karen
>----Original Message----
> From: Black, Elizabeth
> Sent: Thursday, November 25, 2004 3:35 PM
> To: Baldassano, Matt; Ryan, Patrick D; Taxops
> Subject: FW: Highbridge LPS Basket
> Antony
> I have sent this mail to London who will check the cusips and tell you
> if they are seen as interest payments or dividend payments
> If dividend payments then their USWT rate on real dividend income
> received is 30%
> If interest paymentes then their USWT rate on real interest income > received is 0%
> Thanks
> Liz
> ----Original Message----
> From: Demonte, Anthony V
> Sent: Monday, November 22, 2004 8:30 AM
> To: Black, Elizabeth
> Cc: Ryan, Patrick D; Baldassano, Matt
> Subject: Highbridge LPS Basket
> << File: Book1.xls >>
> Liz-
> The spreadsheet contains long positions for HB, which we currently buy
> into a swap to enhance their yield for dividends. Can you have a look

    at the top 5 to see if there is any withholding for a Cayman domiciled
    account. We are trying to identify trades where it makes sense to
    leave long positions in their LBIE PB account. Without reducing their

> yield.
> Thanks,
> AD
```

Page I of I

Verna Ramirez

From: Donna Howe [DHowe@angelogordon.com]
Sent: Wednesday, August 11, 2004 8:34 AM

To: George Fink
Cc: Joseph Wekselolatt
Subject: Re: CFDs

Hi George

I understand that they settle in cash, However it does not appear that they are booked correctly, nor are they documented correctly. I've got a call into Lehman. We may need to change the way we deal with them.

I'll keep you posted.

Donna

>>> George Fink 8/11/2004 6:33:42 AM >>> donnar all cfds settle in cash, a cfd is used to circumvent the tax.

>>> Donna Howe 08/10/04 04 53PM >>> All.

I see a sycode SLRPRS CFD with Lehman that is booked in TPM as "PS" preferred stock. Obviously this gets booked as a cash instrument. How does it get confirmed? How do we notify Lehman in the trade upload process that this is a CFD rather than a security, I don't see any legal agreements for this. Do they margin us?

Two examples of SLRPRS CFD trades are TRXNUM A4063713 on April 1, 2004 and A4069046 on April 13, 2004 in CVPF

Thanks

Donna

Permanent Subcommittee on Investigation

EXHIBIT #13

ANG-PSI-0001088

Proprietary & Confidential Information

From: Sarah Robertson <SRobertson@angelogordon.com>
Sent: Tuesday, July 18, 2006 8:12 PM (GMT)
To: Michael Swotes <MSwotes@angelogordon.com>
Subject: Notes from last meeting with Anthony Harpel.

Meeting - February 28, 2006

update mtg with Swotes and Harpel

- team - working well together — can cover more ground - - ability to go deeper and cover more names —

-event driven/special situations -

less positions -more conviction - evolving more into a stock pickers model

Can look overseas - UK, Germany , Hong Kong -

-Contracts for Difference \sim used mostly in offshore fund - so we don't have dividend withholding CFD is probably about 20% of portfolio

Redacted by Permanent Subcommittee on Investigations

Proprietary & Confidential Information

Permanent Subcommittee on Investigation
EXHIBIT #14

ANG-PSI-0000003

rom: o:[-]	PATRICK RYAN [pryan@lehman.com]. STEVE TROMMER [strommer@lehman.com].	Sent:12/30/2004 9:12 AM
c:[-]		
oc:[-]		
ubject.	- Bloomberg Internal message sent from PATRICK RYAN <pre>pryan@lehman</pre>	com>.
THE (Reply i did s	ome more digging, challenged the tax group on their	UNWINDING
	nswer and it turns out the majority have partial lolding so need to stay in CFD. TYPICAL I	
I GUE	SS THE BIGGER QUESTION IS THEN IS PACEY GOING TO	TELL
GAR' Reply	WOLF WE CAN'T PAY 100%	
	hink he has the nerve to!	
	and the property of the control of t	

Permanent Subcommittee on Investigations
EXHIBIT #15



Permanent Subcommittee on Investigations EXHIBIT #16

```
> Sent: 07 May 2002 13:51
> To: Story, Richard G; Dorman, Jeffrey S
> Subject: FW: SWAPS FOR ANGELO GORDON
> what do you want to do?
> ----Original Message---
> From: Trommer, Steve
> Sent: Monday, May 06, 2002 3:06 PM
> To: Pace, Alan; Ryan, Patrick D
> Subject: SWAPS FOR ANGELO GORDON
> Gary Wolf called regarding the swaps that was discussed on his
> pref's.
> He said he is being quoted by other brokers on the street 100% > dividend doing it via a total return swap as opposed to the 92.5% we
> offered
> via CFD..

    He said he would be looking to do this on his more long term
    positions as opposed to one's that he knows they will be getting out
    of.

> He wants a call back tomorrow either way so he knows how and
 > with who to proceed
 > Steve
```

Equity Finance Yield Enhancement

[auto date]

Permanent Subcommittee on Investigations **EXHIBIT #17**

Yield Enhancement

The following products are either in the pipeline or in progress:

- CayCo.

-LuxCo.

- DivCo.

- Basket Transaction

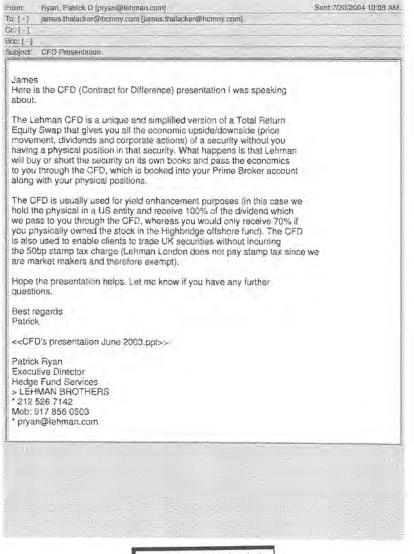
Each item is described below.

[auto date]

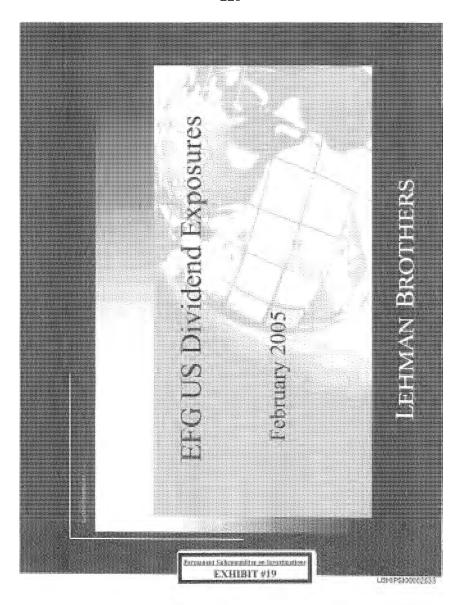
Yield Enhancement-Cayco.

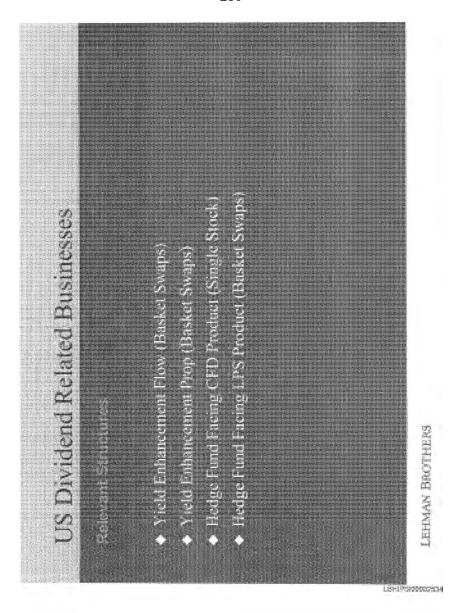
- CayCo.-an offshore vehicle organized in the Cayman Islands. This entity borrows shares from residents of 70% and 85% countries. These shares are then loaned, sold vs. swap, or sold outright.
- Approval was sought and received during FY03 for a \$25million risk limit. This translated into \$12million of P&L.
 - \$25million. Due to implementing suggested structural changes we Risk limit was increased to \$50million in FY04. Anticipated P&L is believe overall risk is lower notwithstanding increased risk limit.
 - Supplemental CayCo. Business
- Final approval received this week to have Cayco. loan borrowed shares to 70% countries or sell vs. swap to 85% countries.
 - These transactions have little or no risk. Annual P&L anticipated to be

[auto date]



Permanent Subcommittee on Investigations EXHIBIT #18





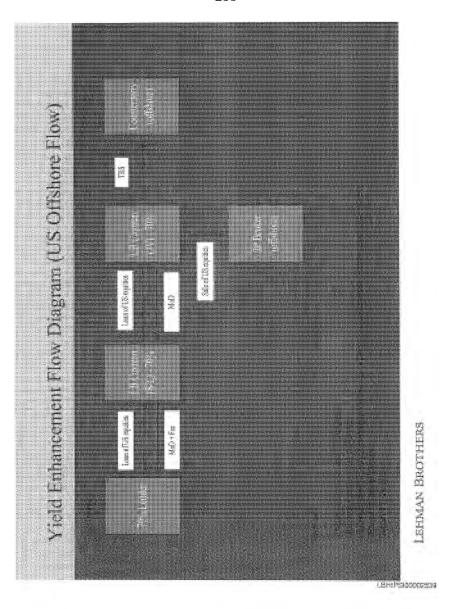
	Notes	Fig. 100 cents Net Balance or dollar Sheet \$2,58N	Pay 10th cents Not Balance on dollar Sheet 53,549N	^a ay 100 cents Bustness m dollar halted in 2004	GIFBalance Sleer Band Second		
	WHT is Risk Pricing of In 2004 Risk	Pay 100 cent on dellar	Pay 100 centrol on deltar	Pay 100 cent on dollar	Pay 66 cents on dollar	Pay of cents on dellar: sup.	
	WHT 65.3	are 2	\$15mm	S. Carrie	State.	Silvan	
	es front. Dividend in 2004	SYdoin	S-Omin	Smile	S150mm	\$100ma	
ures	Lehman Entires (1905) Divid in 200	LBSF-Redge	LBIE - LPS LBSE- Helge	TR3E	LB Cayman	LB Cayman LBF Swap LBSF - Hotor	
2004 Exposures	Trade Type Clear Besc	Offshwe Hedge Funds	Ollybose Hedge Funds	On Offshore Broks	Offshore Bunks	Internal	
2004	Trade Type	US Single Stock CFDs	US Basket LPS	US Single Stock Swaps	YE Basket Swaps: Flaw	YE Busket Swaps: Prop	

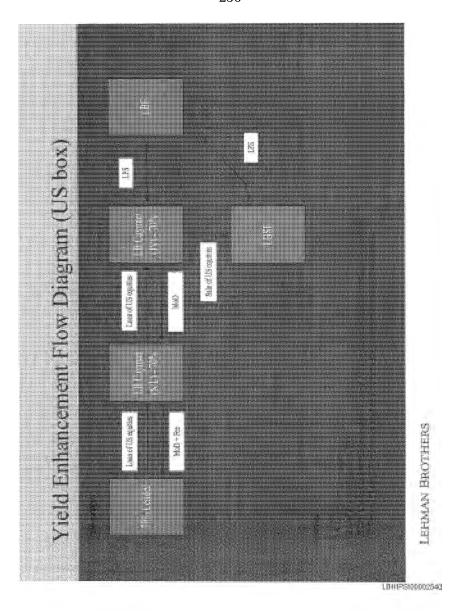
LEHMAN BECTHERS

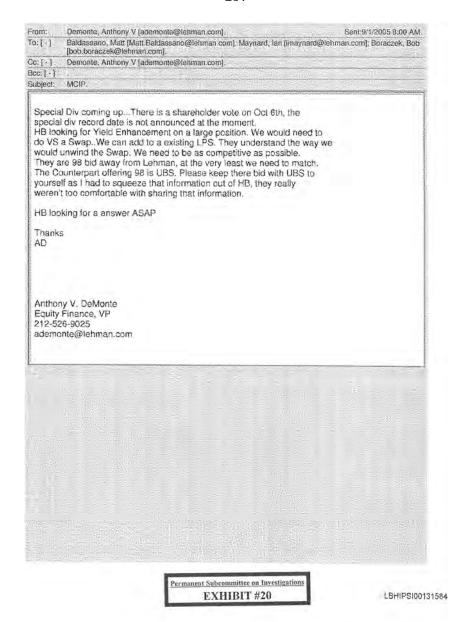
	 Physical DVD Spread Revenues 	Solum	Stipes	Sikmu	S.L.Sam	
	Extrapolated WHT of Risk full Year 2005	\$33tm	Si Sum	Meto	Miller	8
ipolated		\$110ms	Soun	N.T. Warn	S48mn	Maccoss Process Constitution and Constitution of the Constitution
2005 Exposures Extrapolated	1997, 1995 January 2005	STans	S. Sum	ST9mm	Simu	beger stripped and of
Exposu	e (109%, DVD) Descripter 2004	\$7.5mm)s	US Basker LPSS5 Sinn	t Silban os	cho NSum	LEHMAN BROTHERS
2005	advi alseal	US Single Stack CFDs	US Basko	NE Busker Swips, Flow	YE Basker Swaps. Prop	PERSONALISM NEW

Ellem	2 Month 100	2 Month 10ff", WHT Risk	WHT Risk	Global 2004
	OVO	Thereon	Extrapolated	I.B Resenue
Angelo Gondon \$4,8mm	S4.8mm	VI.5mm	Symn	NPmm
Lighbridge	\$5,95mn	\$1,8mn	\$10.8mm	Silma
FM Ventus	SU.5mn	\$0.15mm	S0.9mm	Signer
Tykhe	S2mn	S0.6mm	\$3.6mm	S2mm
S	S1,2mn	\$0,4000	\$2.4mn	Sidma
æc	S1.9mm	S0.5mm	Sime	Sim
917Z Capitui	Silizmii	\$0.4mm	\$2.4mm	Sinai
MG Triton	S8.5mn	K7.5mm	515 Jun	SP (200 Assume)
Total Selected	\$26.05mm	NT,85mm	\$47nm	

4 Counterparties, signed with Cayman. Neurara London Branch, ING London Branch. ABN London Branch Cater Alien London Branch in process of completing with Societie Generalic London Branchand Hypoxeccinshark London Branch. Capacity Restrictions set by US city at \$50mm Business projections are significantly below that limit for 2005 (\$12mm projected) Triparty agens appointed by LB Cayman to handle collineral mevernants Yield Enhancement US Business Properiorsy trades are 3 month galas in chambon LEHMAN BROTHERS LISTS FSaddoctcescan





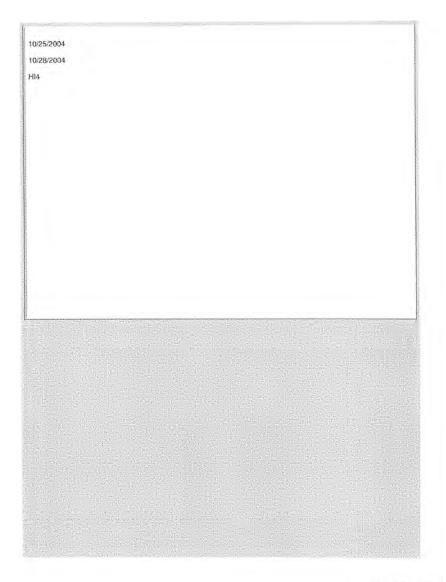


rom: Metaxas, James [imetaxas@lehman.com].	Sent 10/25/2004 4:51 PM
[-] Demonte Anthony V [ademonte@lehman.com]	
0.[-]	
cc. [·]	
	t is the maile as an also
Got it, thanks again.	
Jim	
Original Message	
From: Demonte, Anthony V Sent: Monday, October 25, 2004 4:49 PM	
To: Metaxas, James	
Subject: RE: Trade Confirm	
fyl, the only reason for HB to SWap is for yield enhancement	
thx	
Original Message	
From: Metaxas, James Sent: Monday, October 25, 2004 4:49 PM	
To: Demonte, Anthony V	
Subject: RE: Trade Confirm	
Thanks, Anthony.	
Im	
Jim	
Original Message	
From: Demonte, Anthony V Sent: Monday, October 25, 2004 4:46 PM	
To: Metaxas, James	
Subject: RE: Trade Confirm	
we will trade today, settle on the 28th Record is the 29th They are	
absolutely looking for the div	
thx	
Lander.	
Original Message From Metaxas, James	
Sent: Monday, October 25, 2004 4:38 PM	
To: Demonte, Anthony V	

Permanent Subcommittee on Investigations EXHIBIT #21

	According to the contract of t
Subject: RE: Trade Confirm	
Anthony -	
Are they due the dividends on this as is, or does it have to be a short settle?	
Jim	
all-	
I will book a new LPS Smart Ticket to represent HI4	
thx	
Trade Confirm	

Leh Code Counter-party Buy/Sell Account Desc Ticker Cusip Ont Price Proceeds T/D S/D Basket Lehman Swap Buy from PB High Bridge UTIL (193) Alliant energy Corp LNT 018802108 178,209 \$ 25.90 \$ 4,615,613.10





LEHMAN BROTHERS



April 24th, 2001

Maverick Capital Attn: Sharyi M. Robertson, Partner 300 Crescent Court Suite 1000 Dallas, TX 75201

Dear Sharyl,

It was a pleasure meeting with you, Michelle and Joe. As follow up to our meeting we are providing the following:

· Credit and Financing

Over the next two weeks, we propose a review with senior Lehman Brothers credit executives to provide a fuller understanding of Maverick's financial strength. This meeting will help facilitate expanding of credit lines; setting collateral parameters, cross-notting, secured and unsecured financing facilities, and committed notice provisions.

In addition to the above meeting, we also suggest Joe Manague meet our Treasury group to gain more insight into Lehman's funding process and the Equity Finance finding framework.

Insurance Wrapper for Prime Brokerage

Enclosed are official confirmations from Travelers Casualty and Surety (AA Rated) stating that it has fully insured the net equity for LBIE prime brokerage clients. The coverage extends to assets held on behalf of all Lehman Brothers Prime Brokerage clients at all Lehman custodians and sub-custodians. The policy is available for full legal review with our London counsel.

Drime Plus

Our Prime Plus product provides U.S. based hedge funds risk based margin lending with all the benefits of traditional prime brokerage including the insurance wrapper for added protection. Competitive products re-class short securities into a principal stock loan which result in recall exposure and non-insured broker dealer credit. Added benefits of Prime Plus include "one account" processing and enhanced margin and interest reporting.

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Permanent Subcommittee on Investigations

EXHIBIT #22

MAV0000794 CONFIDENTIAL

Dividend Enhancement Solutions

We have a variety of solutions using swap and securities lending vehicles for achieving yield enhancement. We propose Mayerick provide us an *Interest List* on a weekly basis for possible enhancement trades which would result in quoted indicative pricing levels.

Selectronic Connectivity

We would like to demonstrate our new client web-portal Lehmanlive for both Maverick offices in Dallas and New York. Lehmanlive can provide Maverick personnel direct access to all Equity products including research, economics, prime brokerage, and portfolio analytics.

Lehman Brothers also provides electronic trade connectivity via FIX protocol. Maverick can electronically transmit and receive trade information directly from its order management system. We would like to demonstrate this connectivity in conjunction with the above Lehmanlive demonstration.

Our Securities Lending Desk can receive and transmit stock loan files via standard transmission methods. A WEB solution is under development and will be available in July 2001. We would like to discuss the current transmission methods and select the best solution for Mayerick.

Portfolio Management Systems & Prime Brokerage Reporting

Our head of prime broketage technology Gareth Quinn will be contacting you regarding the current portfolio management marketplace. Gareth has years of experience with most vendors and will demonstrate the Beauchamp software previously discussed. We will also make available resource expertise with the GENEVA software product.

We have recently developed a new suite of prime brokerage reports for June 5th client delivery. Additional reports including accounting and P&L will be released later this year via GENEVA. We will send you a sample of the new report suite May 1th.

. Lehman Brothers Financials

Enclosed are Lehman Brothers' 2000 Business and Financial Review and our 2000 Annual Report. Highlights worth noting include:

- Total Stockholders Equity of \$8.6bil.
- · Total Capital of \$43.8bil.
- · Total Assets of \$225bil.
- Conservative short-term debt profile of only 14% of total debt outstanding (GS @ 57% and MSDW @ 35%)
- Short-term debt to net asset ratio of only 4%
- Highest coverage of "less-liquid" assets in industry of 427% (GS @ 249% and MSDW @ 241%)
- Lowest OTC credit exposure in industry of 100% (GS @ 330% and MSDW @ 111%)

- 2

MAV0000795 CONFIDENTIAL Lehman Brothers Prime Brokerage "Team Maverick" Attached is our dedicated Lehman Brothers Global Prime Brokerage "Team Maverick" contact list. The team will customize their coverage specifically to meet Maverick's requirements.

We are very pleased to have the opportunity to expand the Maverick Capital/Lehman Brothers business partnership and will formally present a comprehensive service and price proposal immediately after the above follow-up items are completed to Maverick's satisfaction. I will call you in a few days to discuss the above issues and initiate the immediate next steps.

Kindest regards.

Howard Blechman Managing Director

Global Head-Global Prime Brokerage Group

CC: Joseph M. Manogue

Maverick Capital 767 Fifth Avenue, 11th Floor

New York, NY 10153

ENCLOSURES

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Lehman Brothers

Team Maverick Global Prime Brokerage Group

Senior Account Coverage

Howard Blechman Global Head - Global Prime Brokerage Group (212) 526-8645 hblechma@lehman.com

John Seyda Global Prime Brokerage Sales (212) 526-0715 jscyda@lehman.com

Alan Pace Global Prime Brokerage Sales (44) 207-260-3030 apace@lehman.com

Securities Lending Coverage

Joe Pagano Primary U.S. Coverage (212) 528-0716 / Fax: (212) 526-6182 jpagano@lehman.com

Steve Trommer U.S. Coverage (212) 526-9025 / Fax: (212) 526-6182 strommer@lehman.com

Patrick Ryan Primary European Coverage (44) 207-260-2445 pryan@lehman.com

Craig Morton European Coverage (44) 207-260-2025 cmorton@lehman.com

David Morris Japan/Asian Coverage (813) 5571-7133 dmorris@lehman.com

> MAV0000797 CONFIDENTIAL

Global Prime Brokerage - Client Service Coverage

Jackelyn Day U.S. - Team Leader (212) 526-9234 jaday@lehman.com

Eli Stathatos U.S. - Primary Coverage (212) 526-7943 estathat@lehman.com

Warran Reed Europe - Team Leader (44) 207-256-4242 wreed@lehman.com

Carmen Cox Europe - Primary Coverage (44) 207-260-1348 ccox@lehman.com

Global Prime Brokerage - Client Technology Coverage

Gareth Quinn Global Prime Brokerage Client Technology - London (44) 207-260-1503 gaquinn@lehman.com

Norman Escoffery Global Prime Brokerage Client Technology - New York (212) 526-6246 nescoffe@lehman.com

Global Equity - Cash Research Sales

Lou Schaufele U.S. Sales - Dallas (214) 720-9471

David De Luca, Chris Valli, Chris Mathews U.S. Partfulio Sales - New York (212) 526-7032

John Snyder, Peter Jarck U.S. Trading - Listed, OTC (212) 526-7610, 528-7055

> MAV0000798 CONFIDENTIAL

Andy Gross, Robin Lowe, Britt Lintner International Sales, Trading (212) 528-6308, 6306, (44) 207-260-3113

Angel Gonzalez-Sanfeliu Emerging Market Group Sales (212) 528-8600

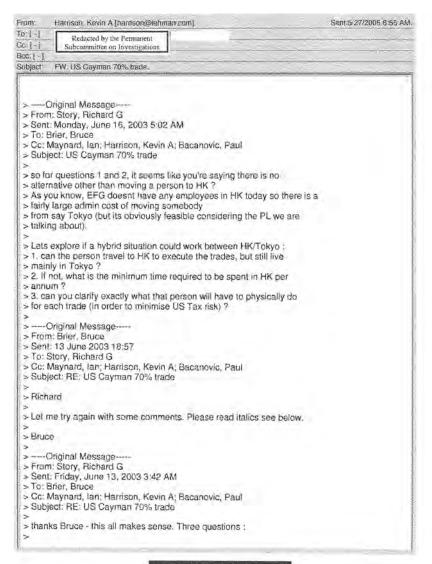
Jay Elkins, Jamie Axford Hedge Fund Sales (212) 526-9130

> MAV0000799 CONFIDENTIAL

rom:	Antonelli, Christopher G [CAntonel@lehman.com].	Sent:2/4/2004 1:43 AM
o:[-j	Baldassano, Matt [Matt.Baldassano@lehman.com].	T = 1
c:[-]		
oc: [· 1		
ubject:	FW: Long Transfers.	
were g here, I they'd the fac tell the that the to mov	way, you should call firm chen in dallas to discuss swaps. We oing back and forth last week, but never connected. Since I'm think you'd be the best person to follow up with him. I think be open to putting some back on once they become comfortable with it that we're not going to push them to sign a new isda. Also, im about doing long swap/ofd business around record date items so ey get enhanced div treatment on us stocks and so they don't have them out to UBS as they have been doing.	
_	acted by the Permanent	
Subce	nunitite on Investigations you later.	
	ginal Message	
Sent: S To: An	jim.chen@maverickcap.com [mailto:jim.chen@maverickcap.com] Saturday, January 31, 2004 2:07 AM tonelli, Christopher G à' Re: Long Transfers	
in the o	I have a dividend enhancement product for long or short US equities offshore accounts? For the long US equities we only do it for C account. For short domestic equities we try to save on our and expense in our LDC and Fund II accounts. Let me know.	
"Anton	elli,	
<jim_o< td=""><td>opher G" To: "Jim Chen" hen@maverickcap.com> onel@lehman.cc:</td><td></td></jim_o<>	opher G" To: "Jim Chen" hen@maverickcap.com> onel@lehman.cc:	
com>	Subject: Long Transfers	

Permanent Subcommittee on Investigations EXHIBIT #23

im, notice that you transfer some of your long position out around their proming record dates to UBS. I imagine that is because of the dividend ayment. Is there something we can do for you that they are? I'd love or discuss if so. Thank you. Thank you. This britistopher Antonelli ehman Brothers equity Finance *212-528-700 *646-758-4540 **646-758-4540 ***Comparison or copying of this message is strictly rohibited. This communication is for information purposes only and hould not be regarded as an offer to sell or as a solicitation of an fifer to buy any financial product, an official confirmation of any ansaction, or as an official statement of Lehman Brothers. Email anamesision cannot be guaranteed to be secure or error-free, herefore, we do not represent that this information is complete or
notice that you transfer some of your long position out around their pooming record dates to UBS. I imagine that is because of the dividend agment. Is there something we can do for you that they are? I'd love of discuss if so. Thank you. This is the something we can do for you that they are? I'd love of discuss if so. This is the solution of the personal and confidential use of the designated recipient(s) named above. If you are not the intended ecipient of this message you are hereby notified that any review, issemination, distribution or copying of this message is strictly rohibited. This communication is for information purposes only and hould not be regarded as an offer to sell or as a solicitation of any rensaction, or as an official statement of Lehman Brothers. Email ransmission cannot be guaranteed to be secure or error-free.
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Christopher Antonelli ehman Brothers equity Finance 212-528-0700 646-758-4540 This message is intended only for the personal and confidential use of the designated recipient(s) named above. If you are not the intended acipient of this message you are hereby notified that any review, issemination, distribution or copying of this message is strictly rohibited. This communication is for information purposes only and should not be regarded as an offer to sell or as a solicitation of any ransaction, or as an official statement of Lehman Brothers. Email ransmission cannot be guaranteed to be secure or error-free.
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caulty Finance * 212-528-0700 * 646-758-4540 his message is intended only for the personal and confidential use of the designated recipient(s) named above. If you are not the intended acipient of this message you are hereby notified that any review, issemination, distribution or copying of this message is strictly rohibited. This communication is for information purposes only and hould not be regarded as an offer to sell or as a solicitation of an fifer to buy any financial product, an official confirmation or any ransaction, or as an official statement of Lehman Brothers. Email ansmission cannot be guaranteed to be secure or error-free.
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ransaction, or as an official statement of Lehman Brothers. Email ransmission cannot be guaranteed to be secure or error-free.
ransmission cannot be guaranteed to be secure or error-free. Therefore, we do not represent that this information is complete or
courate and it should not be relied upon as such. All information is
ubject to change without notice.



Permanent Subcommittee on Investigations EXHIBIT #24

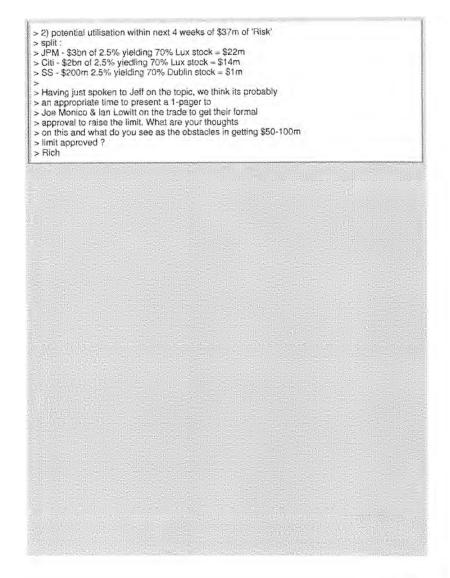
```
> 1. Is it critical to have the person in HK (because its a 70%
> jurisdiction) as opposed to Luxembourg (a 70 or 85% jurisdiction 
> dependent on whether SICAV or FCP)?

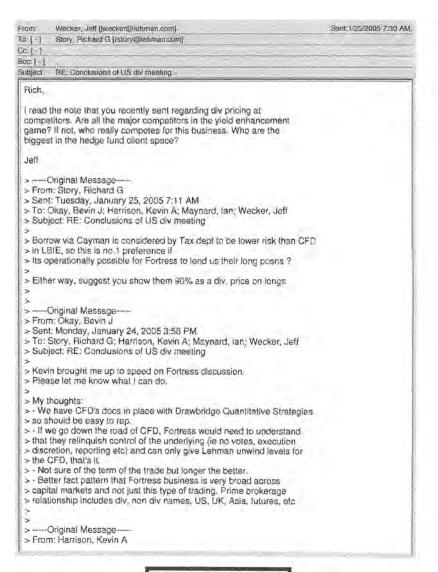
    We have an EFG salesperson in Lux as of last week for EUR div.
    trades, but nobody in HK today, so could do Lux tomorrow but HK would take a bit of work. The reason for the bodies is to thwart any
> argument that these entities are non-substantive shells. If a tax
 > authority successfully argued this withholding and other taxes could

    be due. Luxco is a separate entity which needs its own staff. Cayco is
    a division of Hong Kong for US tax (check the box) which is why the
    body can work in Hong Kong or Cayman.

 > 2. If it has to be HK, do they need to be resident in HK or just
 > employed by a HK company ? EFG employees resident in Tokyo are
 > employed by LBJ but
> Im pretty confident we can arrange fairly easily to switch their 
> legal employer to an LB HK co. Maximum reduction in US tax risk if
> resident in Hong Kong. Moreover, if person stayed in Japan HK entity
> could be considered to have a Japanese branch.
> 3. Can you explain the LBSF safeguard point you raise - not heard
> about that one? The safeguard issue is as follows: IRS is could
> argue US withholding tax is due either on the in lieu made by Cayco or
> the swap payment made by LBSF. This safeguard applies to the swap
 > payment. While the general rule is no withholding on swaps the IRS
 > could argue that LBSF is a agent for Cayco and the dividends collected
 > by LBSF are really for Cayco's (i.e., the swap payment was in fact a
 > dividend payment). One existing safeguard is the use of baskets
 > instead of swaps. In addition to the basket safeguard I proposed
> having LBSF sell and swap back so that LBSF receives swap payments
 > instead of actual dividends. If the IRS used the agent argument there
 > would be no withholding since Cayco could receive swap payments
 > directly. Unfortunately we have some regulatory issues here I am
 > analyzing.
 > I hope this helps clarify the issues,
 > Bruce
         -Original Message-
 > From: Brier, Bruce
> Sent: 12 June 2003 22:09
 > To: Story, Richard G
 > Cc; Maynard, Ian; Harrison, Kevin A; Bacanovic, Paul
> Subject; RE: US Cayman 70% trade
 > Rich
  >
 Attorney Client Privilege
```

Attorney Client Privilege	
	1
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> Regards,	
>	
> Bruce	
\$ 100 personal person	
> Original Message	
> From; Story, Richard G	
> To: Brier, Bruce; Maynard, Ian	
> To: Brier, Bruce; Maynard, Ian	
> To: Brier, Bruce; Maynard, Ian > Subject: US Cayman 70% trade	
> To: Brier, Bruce; Maynard, Ian > Subject: US Cayman 70% trade >	
> To: Brier, Bruce; Maynard, Ian > Subject: US Cayman 70% trade > > Bruce	
> To: Brier, Bruce; Maynard, Ian > Subject: US Cayman 70% trade > > Bruce	1
> To: Brier, Bruce; Maynard, Ian > Subject: US Cayman 70% trade > > Bruce	
> To: Brier, Bruce; Maynard, Ian > Subject: US Cayman 70% trade > > Bruce	
> To: Brier, Bruce; Maynard, Ian > Subject: US Cayman 70% trade > > Bruce	
> To: Brier, Bruce; Maynard, Ian > Subject: US Cayman 70% trade > > Bruce Attorney Client Privilege	
> To: Brier, Bruce; Maynard, Ian > Subject: US Cayman 70% trade > Struce Attorney Client Privilege > Reason I ask is that we are getting very close to having large	
> To: Brier, Bruce; Maynard, Ian > Subject: US Cayman 70% trade > > Bruce	
> To: Brier, Bruce; Maynard, Ian > Subject: US Cayman 70% trade > Bruce Attorney Client Privilege > Reason I ask is that we are getting very close to having large > new supply available which would take us > above our current approved Risk limit of \$25m (per Tax dept	
> Sent: Thursday, June 12, 2003 12:40 PM > To: Brier, Bruce; Maynard, Ian > Subject: US Cayman 70% trade > > Bruce [Attorney Client Privilege] > Reason I ask is that we are getting very close to having large > new supply available which would take us > above our current approved Risk limit of \$25m (per Tax dept > definition of Risk Limit of the 15/30% WHT):	
> To: Brier, Bruce; Maynard, Ian > Subject: US Cayman 70% trade > > Bruce Attorney Client Privilege	
> To: Brier, Bruce; Maynard, Ian > Subject: US Cayman 70% trade > Bruce Attorney Client Privilege	
> To: Brier, Bruce; Maynard, Ian > Subject: US Cayman 70% trade > Bruce Attorney Client Privilege > Reason I ask is that we are getting very close to having large > new supply available which would take us > above our current approved Risk limit of \$25m (per Tax dept > definition of Risk Limit of the 15/30% WHT): > 1) currently utilising \$12m of Risk Limit @ Jun03 split: > BGI - \$700m @ 2.5% yield of 70% Dublin stock = \$5m	
> To: Brier, Bruce; Maynard, Ian > Subject: US Cayman 70% trade > Bruce Attorney Client Privilege > Reason I ask is that we are getting very close to having large > new supply available which would take us > above our current approved Risk limit of \$25m (per Tax dept > definition of Risk Limit of the 15/30% WHT): > 1) currently utilising \$12m of Risk Limit @ Jun03 split; > BGI - \$700m @ 2.5% yield of 70% Dublin stock = \$5m > BGI - \$500m @ 2.5% yield of 85% Tokyo stock = \$2m	
> To: Brier, Bruce; Maynard, Ian > Subject: US Cayman 70% trade > > Bruce	





Permanent Subcommittee on Investigations EXHIBIT #25

```
> Sent: Monday, January 24, 2005 10:25 AM
> To: Okay, Bevin J
> Subject: FW: Conclusions of US div meeting
> Jeff, Kevin
> 1) Fortress client discussion - I think Bevin is the coverage person
> to join this call ?
> 2) decision on clients to re-mark from 100% to say 85-90% - did John
> want to do this for stat clients or PB clients also ?
> Rich
```

Thomas, Alan (IED) < Alan. Thomas@morganstanley.com> From:

Wednesday, July 21, 2004 1:59 PM Sent: To:

epm <epm@morganstanley.com>; Boak, Kathleen (IED)

<Kathleen.Boak@morganstanley.com>; ssgna <ssgna@morganstanley.com>;

mmhotwire <mmhotwire@morganstanley.com>; glbstraders

<glbstraders@morganstanley.com>; nyiedhedge <nyiedhedge@morganstanley.com>;

nycbdesk <nycbdesk@morganstanley.com>

fpgswaptrading <fpgswaptrading@morganstanley.com> Cc:

MSFT Total Return Swaps - FOR INTERNAL DISTRIBUTION Subject:

Attach: Message Text.txt

Here are the main points regarding total return equity swaps on MSFT:

Offshore funds are subject to withholding tax of up to 30% on eash dividends from US stocks

Morgan Stanley can enhance the dividend payout from 70% to 100% through a total return equity swap

-- This is a great opportunity to highlight an application that is relevant to all dividend-paying securities (not just MSFT)

-- The record date for the Special Cash is 11/17/04. We can enter into the transaction at any time, but should aim to do so no later than 11/12/04, for regular way settlement. In other words, there is time, but often the first call gets the trade

- Fees on the swap are the same as commissions on the underlying securities
 If client already owns MSFT, Morgan Stanley will purchase the stock and enter into a swap transaction with no commissions up-front
 - Financing is the same as PB's "debit" rate
- If client is not PB'ed at Morgan Stanley, the Financing rate will be competitive with the debit rate at the
- If the client does not use leverage, the client has the option to fully collaterize to reduce the financing cost - BOTTOM LINE - The incremental cost of having a swap versus owning MSFT is either zero or minimal depending on the client's situation

CONTACTS

Equity Product Marketing Kevin Nowlin [PB] x2-5319 Jeff Penney x1-8670 Venk Lal x1-5974 Adam Langsam [Chicago] 3+726-4342 Bill Miller [Boston] 3+856-8781 Paul Zabaleta x1-8603 Tiffany Smith x1-5478

NY-Equity Sales Kathy Boak [Research Sales] x1-9035

MS-PSI 000798

Permanent Subcommittee on Investigation EXHIBIT #26

Equip	Swa	os Des	k 212	761-	8805
Alan,	Scott,	Matt,	Larry	, and	Oleg

For those interested, please see "Other Swap Q&A" section below.

Thanks. Alan

Other Swap Q&A [primarily for Hedge Funds that are PB'ed with MS]

- ☐ How are margin requirements different between PB and Total Return Equity Swap Transactions?

 As long as the "Bridge Agreement" is executed, there will be no difference in the requirements
- ☐ How is margin / collateral reporting different between US equities in PB and Total Return Equity Swap Transactions?
- As long as the "Bridge Agreement" is executed, the swap positions will be included in the PB margin reports along with the equity positions. The collateral that is systematically moved to a separate collateral account will be reflected on a separate interest report which is very similar to the PB interest reports.
- O What additional costs are there with Total Return Equity Swap Transactions?
- There are no costs beyond those incurred when trading and holding in PB the underlying securities
- Fees on the swap are the same as commissions on the underlying securities
- Financing is the same as PB's "debit" rate
- □ What percentage of the dividend will the Total Return Equity Swap Transaction pay?
- In contrast to the 70% (30% withholding) of the dividend that is received on the underlying securities, the swap will pay 95-100% of the dividends.
- ☐ What credit exposure is associated with Total Return Equity Swap Transactions?
- -- Performance under the equity swap transaction agreement is the obligation of the parties to that agreement. Therefore, the parties are subject to credit risk to each other.

 - Monthly resets are the standard, and go a long way to reducing the credit exposure.

- How are Total Return Equity Swap Transactions reported?
 Transaction, position, dividend, financing, and corporate action data is available through ClientLink, and in a format that is very similar to the PB reports.
- ☐ Who will cover my client service needs for Total Return Equity Swap Transactions?
- The same PB representatives that cover your needs today are well-versed in equity swaps and can bandle related issues.
- D How do I terminate a Total Return Equity Swap Transaction and use a different broker to MS for executions?
- The client may short shares through another B/D. MS will then sell to the client the underlying securities to cover the short and terminate the swap.
- ☐ What documentation is needed prior to entering into Total Return Equity Swap Transactions?

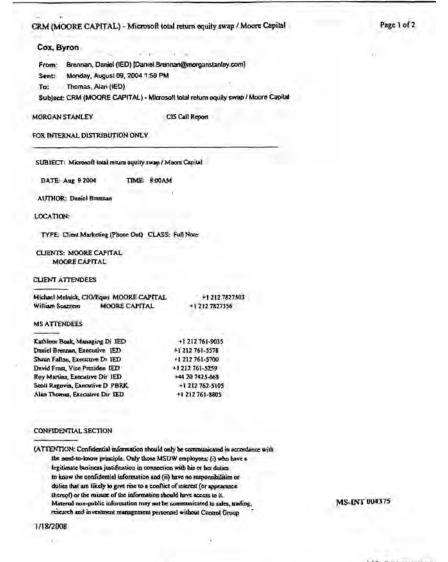
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- Master ISDA Agreement contains general terms of swap transactions
 Credit Support Annex contains collateral related terms
- Credit support Annex contains collateral related terms
 ATS Annex allows for Trade Activity Reports to be delivered and introduces the concept of deemed confirms (only initial confirmation peeds to be executed), and therefore substantially simplifies the documentation process around equity swaps [Optional]
 Bridge Agreement allows PB to set collateral requirements on the combined equity and swap positions
- [Optional]

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MS-PSI 001408

Permanent Subcommittee on Investigations EXHIBIT #27

CRM (MOORE CAPITAL) - Microsoft total return equity swap / Moore Capital

Page 2 of 2

pre-cleanors.)

Spoke with Bill Seazzero who works on Moore's trading desk to ascensia sessiolness of the MSFT total return spulry away for Moore Capital. Bill informed me dust Morgan Sannely and Moore Capital frequently measact such aways to maximize resuma given affishere estates and dividend withholding issues and that these issues are unsoft when eace of our Prime frendering group and Moore's back office. Soon Ragovin referred me to Roy Martin from our London financing team, who indicated that he spoke w recordly with Trony Gallagher (Moore Dir of Operations) and his maintain Sal Belezo on, unnongst other items, he MSFT total reason away. Since the tract to end cassastion of the MSFT ways will be different from other dividend total return aways we do with Moore, its a bit more complex. As well given Moore Cepital regards in and out of ringroundy; it may be to be beneficial for this trade, a last Thomas thought it may make asses to pitch the MSFT trade desirals to iometime at the PM or trading side vs relying on the operations group; I have let Mike Melnick and BII Seazzero aware of the back issues and offerent yea sconversation with our frastracing team to drill into the issues. Will look to set up a call with our fusancing team pending insered from Moore.

DISTRIBUTION

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1/18/2008

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MS-PSI 001409

Penney, D. Jeffrey (IED) < Jeff Penney@morganstanley.com> From:

Thursday, July 22, 2004 8:34 AM Sent:

epm epm@ms.com>; dmds <dmds@ms.com>; Boak, Kathleen (IED)

boak@ms.com>
Portogallo, Richard (IED) crpert@ms.com>, Lalli, Steve (EFS) <alli@ms.com>, fpgny
fpgny@ms.com>; fpgln <ipgln@ms.com>; Kermisch, Jamie (IED) <jamiek@ms.com> To: Cea

MSFT div timing Subject:

Please note:
This trade is more urgent than people are assuming. It should be traded NOW. Here's why:
Although the special is slated for November, we do NOT want to put on trades close to record date. Tax risk increases dramatically. The trade should be put on well in advance of the record date.
There is also a regular dividend in August, which presents a perfect opportunity to get positioned in advance of the special.
Furthermore, we don't want to trade on top of that record date, either.
Bottom fine, this is CURRENT BUSINESS, over the next 2-3 weeks. Please do not let clients become complacent.
Finally, feedback from Goldman Sachs PB clients is that they have NOT heard from Goldman on this. We have first mover advantage and need to close.
Regards,
Jeff

Permanent Subcommittee on Investigations EXHIBIT #28

MS-PSI* 020727

MSDW Equity Finance Services I (Cayman) Limited ("Cayco")

Outline operating procedures

It is the primary responsibility of any business looking to enter transaction on behalf of Cayco to ensure that these Operating Procedures are completed with. Any transaction that does not comply with any of the terms of these Operating Procedures represents a 'new structure' and requires a sign off from the support areas listed in 5. below (or, where indicated, the specific support area mentioned).

General Restrictions

- Generally, Cayco is a thinly capitalised company and cannot absorb losses. Any transaction proposed for Cayco must take this into account, including where any profit or loss on the transaction will reside. The business unit controllers and the legal entity controllers should be involved in any such proposals.
- Cayco should never hold long stock positions. All securities should be sold, loaned or delivered out of Cayco intra day.
- Cayco must not enter into stocklending arrangements direct with MSIL. If stock needs to be lent to MSIL, any stock should be lent to MSKG and MSKG should onlend the stock to MSIL. An exception may be granted to this rule for deliberate monetisation trades; in such cases, a sign off should be sought on a case by case basis.
- 4. Surplus cash in Cayco must not be lent to any affiliate or entity in the US without the approval of the Tax Department (because of s.956 (deemed dividend) problems). Any such cash may be lent to MSIL, but only for a maximum of 364 days (otherwise there are interest withholding tax problems).
- 5. If Cayco (I) is to enter into derivative transactions (including options and swaps): or (ii) is to have equity exposure (i.e. they are not delta flat), dispensation should always be obtained from Law & Compliance, Tax Department, Regulatory Capital controllers and the legal Entity controller.

Specific US Restrictions

- Cayco may sell stock positions to US institutional investors, using MS&CO as 6. agent and follow rule 15a-6 procedures.
- Cayco may not enter into stock lending transactions with any US counterparts unless that counterpart is a registered US broker-dealer or bank lending for its own account and as agent for its customers.
- 8. Cayoo may not purchase securities from any person in the US other than a US broker-dealer or bank.
- Cayco may not enter into derivatives transactions with any US person, 9.
- 10. Cayco may not carry out any repo activity with any US person.

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MS-PSI 020270

- Cayco may not source collateral from MS&CO or from any customer whose account is carried at MS&CO (directly or indirectly through MSIL).
- Cayco may not lend US equities against cash collateral unless the cash is equal to at least 200% of the value of the US equities or the borrower provides Cayco with a "permitted purpose" representation.
- 13. Cayco may not carry out any advisory business.
- 14. Cayco may not invest in futures.
- Cayco must maintain its books and records in accordance with the US GAAP and in a fair and consistent manner.

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"SANJAY MADAN, DEUTSCHE BANK SECURI" <SMADAN@bloomberg.

To: Andrea Leung/NewYork/DBNA/DeuBa@DBNA

Subject: SARAH WAS GOING TO LEAVE YOU A MESSAGE FROM ME, DETAILS ON

10/15/2004 04:12 PM

SARAH HAS GOING TO LEAVE YOU A MESSAGE FROM ME. DETAILS ON THE OUESTION IF IT HELPS—AT PHOENIX INVESTMENT PARTNERS OWNS 400,000 SHARES OF MSFT. THE SPECIAL DIVIDEND PAYABLE IN MID NOW WILL CAUSE HIM ACCOUNTING ISSUES. HE SAYS THEY HILL HAVE TO TREAT THE 59 DLY AS A "RETURN OF CAPITAL" WHICH WILL CAUSE THEM TO HAVE TO "AMEND 1099'S". HE IS LOOKING FOR A WAY TO MAINTAIN EXPOSURE TO MSFT BUT AVOID THE DIVIDEND PAYMENT. ARE YOU THE RIGHT GUY TO ASK AB OUT POSSIBLE DERIVATIVE SOLUTIONS? THANKS. KEITH

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> Permanent Subcommittee on Investigations EXHIBIT #30

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DB-PSI 00000095

Paul Busby@DBNA 09/16/2004 08:49 AM To: JP MuirNewYork/DBNA/DeuBa@DBNA@DEUBAINT
cc: Andrea Leung/NewYork/DBNA/DeuBa@DBNA, EPS-NA, Richard
Kennedy/NewYork/DBNA/DeuBa@DBNA, Edwin
York/NewYork/DBNA/DeuBa@DBNA, Edwin
Subject: Re: Extraordinary Dividend Rules and Microsoft One-Time Dividend

FYI-

We are in the process of determining hedge fund demand for "All In" enhancement to clients and our own proprietary trades with Simon Pearson. We'll be hopefully sitting down as a group in the next week to outline our plan of action on 70% dividend liability underlying.

Paul Busby Director Global Equity Prime Services Securities Lending Tel 212 250 5766 JP Muir@DBNA

> JP Muic@DBNA 09/16/2004 08:37 AM

To: EPS-NA, Richard Kennedy/NewYork/DBNA/DeuBa@DBNA, paul.busby@db.com, Andr∋s Leung/NewYork/DBNA/DeuBa@DBNA

Subject: Extraordinary Dividend Rules and Electrical One-Time Dividend

perhaps useful info. Forwarded by JP Mulr/NewYork/DBNA/DeuBa on 09/16/2004 08:33 AM -



<EmstYoung.NYFSO@ 09/14/2004 05:21 PM

Please respond to ErnstYoung.NYFSO

To: JP Muir/NewYork/DBNA/DeuBa@DBNA

Subject: Extraordinary Dividend Rules and Formers One-Time Dividend

As expected, the "qualified dividend" rules enacted last year have affected more than just the lax rate applicable to many dividends. The reduced tax rate on qualified dividends also has encouraged corporations to maintain or increase their dividend payments to investors.

Please click here to read more about Howard Leventhal's and Joe Bianco's comments.

Please click here to update your personal profile.

Please click here to refer a colleague to receive the Ernst & Young Hedge Fund Tax Alert.

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DB-PS/ 00000085

Prepared by Andy Pettil, Global Product Development

PROJECT: DBIL Rehypothecation: U.S. Record Date Availability Projection

Conference Call Tuesday, February 6, 2007 Attendees Laurence Pillon (London) Simon Pearson (London) Don Copans (NY) SuiMin Zhang (NY) Andy Pettit (NY)

Background: DBIL (Jersey) executes "blind" rehypothecation trades with U.S. PB clients for dividend capture purposes that run over record dates

Issue: PB clients recall U.S. dividend stock prior to record date.

Goal: To identify clients that are likely to reduce their eligible U.S. stock positions prior to record date.

Current Process: SuiMin sends file 10 days prior to record date of holdings of the identified U.S. equities by client alias (client is not disclosed).

Working Solution: Utilizing CPort data, SuiMin will retrieve the 10 days prior to the last two record dates, going back 6 months, of the U.S. dividend stocks identified, of the positions held by PB client aliases. Priority order will be those U.S. stocks going record in the next thirty days. This data will be sent to Simon Pearson for analysis.

- Next Steps:

 1) Deliver historical U.S. dividend stock holdings report to Simon Pearson.
 - 2) Simon will analyze and determine if the data is meaningful.
 - 2) Simon will analyze and determine it the data is meaningful.

 3) PHASE I If data has value, SuiMin will construct process to deliver historical

 U.S. dividend stock holdings history report by client alias 10 days prior to current record date for each applicable issue.

 4) PHASE II Develop correlation analysis by client alias by issue of
 - trading/holdings trends,

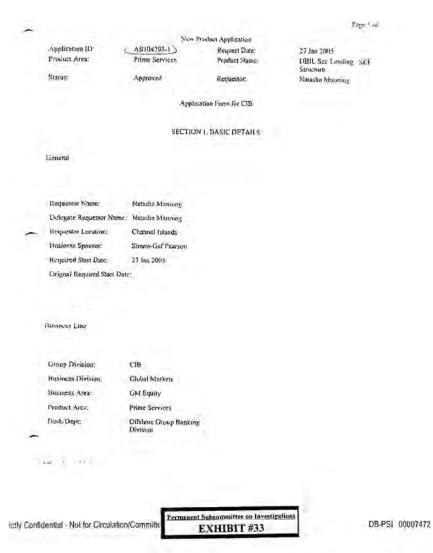
Next Follow-up Meeting: Tuesday, February 13, 2007

Permanent Subcommittee on Investigation EXHIBIT #32

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DB-PSI 00004272





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NPA Category			
NPA Category	Enhancement	Enlancement To:	AB104295-Securities Lending/Horrowing in DBH
Support Groups Conta DB Ldn Global Equi Signed off by mail in (ties;DB Ldn Prime Brokerage; I	ax:Cummiling:Operations:Credi	icLegal: Treasury - altendy
SECTION 2. PRODU	CTDATA		
Product Name and De Product Name:	DBIL See Lending / SE	F	
Product Description:	DBIL. This request for signed off structure of formalise matters. DB well as entering into T derivative (option or i existing MPA. The od transaction only. The derivative environment institutional Chemical Chemical Marketing Toffshore Group Creding Marketing Toffshore Group Creding the Medical Chemical Chemi	though we require that everyone IL will bornow US seamities for orward). The securities leading to ditional approval is sought for introduction of DBIL to the Section to the properties of the production posteroparty credit approval will be earn. Global Equities, but will also to Committee within DRIL, Jesse olesale Deak within the Jersey B to diverage account with DB Lond cocount will be covered by PB in discount will be covered by PB in the control of the properties of the properties to the properties of the properties of the properties of the properties of the properties the properties of the properties the properties of the properties of the properties the properties of the properties the pro	only one half of the provinciely re-sign this PPA, just to an institutional investion as of equity to the market, OTC transaction falls under the derivative component of the derivative component of the derivative to the securities will be a driven by the Securities will be a partially the securities will be applying DPI, Jersey on to facilitate the transaction to facilitate the transaction.
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	Brokerage account. To DB London under an structure. STRUCTURED	nde support and middle office fo agreed SLA. Pleaso see attachme	nections will be performed by int for detailed product
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Product Type: Itxchange Details Faschange/OTC: Maturity Maximum Motority: Linderlying Index	Brokerage account: In DB London under an structure. STRUCTURED TRANSACTIONS OTC	ade support and middle office Regreed SLA. Please see attachme Assot Class: Exchange Name: Commodities	nections will be performed by int for detailed product
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Product Type: Lixchange Debails Exchange/OTC: Maturity Maximum Motority: Linderlying Index: Underlying Index: Chreneles: SECTION 1. LOCATI Legal Entity locations.	Brokerage account: In DB London under an structure. STRUCTURED TRANSACTIONS OTC I Year	ade support and middle office Regreed SLA. Please see attachme Assot Class: Exchange Name: Commodities	inctions will be performed by ini for detailed product Equity

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DB-PSI 00007473

Page 1 m Trading Locations
Primary Proposed Location: Channel Islands Additional Proposed Locations London Existing Locations London, Frankfurt, New York, Sydney, Tokyo DSI Client Target Group Costomer Type: Financial Institutions Customer Locations: Various Sales/Origination Locations: Sales/Origination Locations:London DR Legal Entity Offering Product
Deutsche Bank International Einsted Deutsche Bank AG London Prime Brokerage; Deutsche Bank AG London SECTION 4. MODEL & OPERATIONAL DATA Model & Pricing Information
Model Name: Not applicable Pricing Sources: Systems Information
Front Office Systems: iDelta IMS Sentement Systems: Global 1 eSpear SECTION 5. BUSINESS CASE Rusiness Case
Transaction Volume: 100 per month Revenue: Eur 10m SECTION 6. ATTACHMENTS Attachments DBIL See Lending alternative structure (NPA) (See reset page)

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D8-PSI 00007474

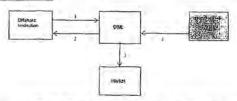
Deustche Bank International Limited ("DBIL") Equity Finance alternative

Rationals

The requirement from SEF to homees the use of one of the officer group has been provide over at least a few years and GEPS or even equifies as a division has a detect detabling from this.

Breathy specialing, there are substantial US equities held offsiture orbicls are consistently included in hacker patients (backets that would be borrowed on an exclusive basis for use tenther the coveral equities bitment) who are constructed in that pricing a say borrow of them CD equities requires a obtained on the patients of the construction and payments of within-felting tax on substitute payments equal in 15% of any divident. Our competition of the tax to be excessed for this set a figure as one of their oil patients, and constructed the construction of t

Alternative Structure



- A non-US treaty resident catety ("the lender") boths US equities. Part of its narmal course of business is to had these smalls to the number. It lends DBH, a basket ("the backet") of such
- business is to baid theirs sended to the outries, it render that a country to the holder DBL pledges collected equal to the value of the specific yarmal to organize.

 In the of the holder DBL pledges collected equal to the value of the specific yarmal to organize the present of collected is standard in the general sections be built where the collected a world be either easis (1950 or another major surmedy) or Of detail should be GDD.

 It is sufficiently to a first a smooth pBL, would sell the backet as the enacket (probably of the breket market) in fine of UNIV pash (DVP).

 As a breight of a debyer either:

 DBLL boys a sall option from DBL and sells a post option to DBL both a mannify convolute between it days and 40 days; I no options would be physically satisfied group DBL the right to buy the shares with a strike algebil power than the reference price.

 DBL would be equal, the resulting permission always a synchic by DBL, to DBL, to DBL. 12

ök

- DBIL deters into a furward (again physically actifed) agreeing in buy the above back at a furward price, again there would only be a payment from DBIL to DBL

The rest in not part of the NPA but completing the picture of what we may do to reap a positive france of



- Independently, OB Landon Branch ("DBL") buys a swep on a similar backet of terms of quentity and consultation from one of its bestimational Clients (beneficials relationships). The series of the except would nature that of the options or forward above francing from 3 weeks to 40 days; As assumption we could make would be that the Institutional client buys above from the number to hedge this strap.

Afore detailed Cash and collateral Flows

The instruction is fairly simple in many and all complications arise from standard settlement, each flows and resimp collisteral. Peterflood before are some of the variations and problems that the occur and have or proport to deal with them.

On frade date DSIL would errange for the loan of a backet of U5 regulabs ("the backet") in 3 days uner (the concides with the standard MS sectionest syrie) from the lender. Collaboral will be required as areas in the 2 above and this regulate of different forms.

Coult collisions - inception

Stoodard south transactions are DVP (delivery versity payment) extending that the earth collisional and the hardest should know as the transaction. The flow bould be self-follows:

- Signs 1 and 2

 1. Trade date ("TD"), agreement of the loss lakes place

 1. Seatleoned date ("SD"), DBIL require introduct facilities to plating cash collinered as the leader (1981), but now the cash introduct for DBI.

 1. The cash and stock move at the fame lane leaving DBIL long stack and the jender long cash.

- Steps, if and it we should be supported by the DBL exercises sale to the market (a broker) on a T = 1 base. DBL also extent into a patient or first with DBL using the sale price as the reference price x_i . On SD (after steps 1 and 2 begins) DBL receive more from (iii) above and use this is settle the . DVP (after standards). DBLD, reactive UBC useb.

 vi. DBLL that DBs large stab to resum the into-day Analogy than DBL.

Stiffment fails. Steps it in a Negation.

Stiffment fails. Steps it in a Negation.

Steps 1 and 8 must began together as for carriag point record with the intendsy funding free DRI, moving to DRIL. If the intends point produce it is not provide on part and the DRI of the intends of the INT with the intends of the INT with the intends of the INT with the INT of the INT of

If both tiegs 1 and 2 happen and perhaps they tike place too late during the SD for 3 to settle, Dikit, will be long stack and short the inter-day cash hading to DD. As part of DB/L spectral bittless it has consistent ownering losses in DB. We then religious begainst critical of titles for any short cash in cortain against existing losses. If this happens the at night, overeigh shading in this instances about to possible under the arringeness DBL has with NY. Again, if you shall be also and optionally alfound be parishly stacedled, if not the asia will fail to ving DBL in the same position (their spectro cortain in the cognition unterty). Any costs of failure will be bound by the relevant porties to the fail. This will be interest costs primarily as described above.

Step 3 is DVP and the stock and trub normalisms occur at the same time. As these relying the market proker involved any fail would put as back in the position above.

Figsh collutered - unnited
The unwind in reverse should flow as follows.

- Norm 1 and 4

 i. On SD of the same date of the protein minus 3 brainest days (normally the Valuation date "VD" for the options/fixely (DMI), would bury jabors from DBL at the extension piece of the options/fixel DVP (updated 18D each).

 DBL requires intervally fixeling from DBL and over as steller the DVP purchase.

 Jii. DBL requires intervally fixeling from DBL and over as steller the DVP purchase.

- Organ I and 2.

 30. On 5D of the serim base unlose 3 days DBH, will repressible the leader to return shorter in that of the collaters! (to coincide with (iii) above?)

 4. SD, the dispressed each trave DVP unwinding the later transaction. This leaves DBHL long cash and about invarially funding to DBH.

 50. DBHL returns the introduction funding to DBL.

Inditioners (alls - Steps 1 as 4 United Light 1 and 4.
As these deps rely on the DBL purchase senting, if this fails DBLL will be left with the invariaty facility. From DBL. Depending on the time of tay of the fail this may be retorned to DBL before the final deadline for taily finding or sweet by occurry out of the outers (as described above).

Steps I and J_s If they the above will happen. If they creite then DBIL will be long stock and short integrated by DBIL, to this case DBII will rely on legal right of offset against existing leans. This will also be the case it steps I and 2 fail (as they are DVP).

Non-eath callutural - inception

Where conscath collateral is required by the leader settlement of the cultureral mornally rules place use humans day before settlement of the sweek "propays", to this case the flow weaks be as failtener.

- Sopol to it.

 1. TD, agreement of the han takes place (again SD in TD + 3 stays).

 3. SD miles 4(SD 1" or TD + 2). DBH, require new-cash collisions ("(1)0") which they get from a regar with DBL.

 3. DBH taying the G10 to the lender on SD 1.

 30. DBH taying the G10 to the lender on SD 1.

 30. DBH taying the G10 to the lender on SD 1.

 30. DBH takes gives stock to DBH (against the prepayment of G10).

 3. DBH take the stock to settle DVP with the intrict broker. The cash raised to settle to settle DBH the proposition DBH.

In this contest the teps G10 is delivered one day before the each active which implies an offset of exposure of against existing those mode by D3IL to D3L. The report exposure will never exceed the loans wishanding

Scalement firsts — report I to 4 Inception
If the DBL crops fails and DBL do not receive the O10 (SO — 1) that the whole transaction will fail as
DBL can so people and got the stock on SD. All parties whould be flas altimosph DBL may aren't to entire
extend confirmant of the sale to the moviest profess and the partical facing DBL (to accommodate the extenday settlement systel). If this is not possible a unwhele fail will occur and we are bock to the silvation
described whore of standard morket interest elsims.

IFDBIL receive the Q10 from D101 and D811, are not oble to pass it on to the leader than the whole instruction will fail. DBE in this increase will have repeal the £100 a by earlier than required for expell actions of the dock, which will not the affined identified above. The position with committing from of the odd, and of the panel of the reach of the dock and of the panel.

If the G10 makes it to the leader SD \sim 1, the first log that could fail as the apart coming to DRH, as SO. In the rate the situation is countly as describe above

If the GIU neater with the leader 50 -1, the stock in passed to OBIL by the leader but was not be settled by the market lander then the position is also as above.

Mit where prepay takes place a day iso only the consequence is just an eximality's worth of circlit insk on the prepaid cultiletal (and probably an extension of the cape by a day).

Nap-ceah enitateral - samina Thu again is listly simple as follows (although there may be a requirement to "postpay" as, province colineats in the lender for an exist stay - this is an a frequent requirement). In reverse order:

- Steps 3 and 4

 Div Dig the regions feed DBH, may choose from the DBL at the exercise price of the options fived.

 DVP against USO could

 DVP to page the DBH could be seen to be seen to

- Stype I and I.

 10 In the same VID DBL will agree with the leader the return of the dimens in line of collations (to coincide with it) (where).

 10 In SD the shares will fine the group (as the leader has C in already), which the leader will return the OH mans day other will be a postpay for our day.

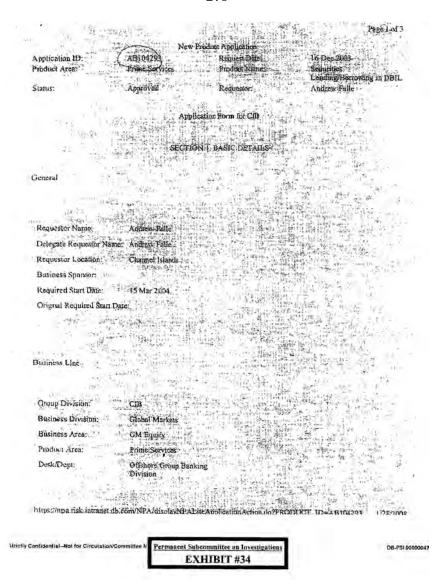
 11 In the OHO is returned same than the maps enders this posts and the OHO is returned for USD and, the each until pring the inter families (10 to returned one to to swang day then the typo will and day after same 0.

Senhouses faile—steps I in a Unional.

(File purchase from DBL fails then DBL will have no shock to crasm had the whole box and repo with reach the settanded by one most by DBL, will be fell with inter-day finding from DBL and deposition upon the time of day after this will be returned in sweet from the time of day after this will be returned in sweet from the insector by treature.

If the purchase selled then DBIL will be long stock and thorteans day costs. If nothing else writes then the short cash with offset ogainst exciting joins as described above.

If the time's service back to the lunder and DBIL do not receive the O10 than the position of the same as above although is this care step taxe no stock.



Page 2 of 3	
NPA Category	
ATTY Salegory	
NPA Category: Regular New Product Enhancement To:	
Support Groups Contacted DB Lth Clobal Fouries DB Lth Prime Brokerage Tax Controlling Operations Credit Legal Decasury	
SECTION 2. PRODUCT DATA	
Product Name and Description	
Product Name: Securities	
Lending Bornwing in DBU. Product Description: Quichl Squares have identified dients who have US sinck available for tenting together with identifying a potential bornwing of the same stock. DBU Jeries will sit	
in the middle of the trip saylor and lake a margin from the horrowing fees being paid and received. The inhaduction of DBIL todae Securities Lefting cryyronment will	
embance existing DB Group activity on different exhibits. Visiting our Cheur Counterparty excell approval full be driven by the Securities Lending Marketing Teams Global Exhibits, but with the proposal by the Offshore	
Cropp Credit Committee white DBIL Jersey from Office activities will be windered by the Wholesale Desk within the dersey Janking Division DBIL Jersey will operate a Pump brokersplaceoustwin DBI London to facilitate the steasy-tion.	
The operation of his account valles covered by PB documentation between DBIL . Jerseyand DB London: Back Office functions will be justified via the Prime.	
Binkerage account This product is potentially only an interior subtion while we seek to Discounself K. Controlled Foreign Lompianes. Essues. When we have done so it is anticipated that this product will be developed into a most intricate structure which	3
will generate gratter revenues for the DRAMMI as a AND is and will not scaped the participation of a flow pany. An NPA will be produced for this which are CFC assues are resolved. We have consulted with the local reson, these see Product	
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Product Type: STOCK Asset Class: 0	
Exchange Details Exchange Orto: Off Exchange Name.	
Maturity Maximum Maturity: 1 Year	
Underlying Index Underlying Index Commodifies:	
Currencies	
Currencies USD	8
SECTION J. LOCATION DATA	
Legal Entity locations Channel Islands Secondary Location:	
Trading Locations	
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Page 3 of 3
Primary Proposed Location: Channel Islands
Additional Proposed Locations: Existing Locations: Locations Frenkfurt, New
Client Target Group Customer Type: Financial Institutions Customer Locations: Various
Sales/Origination Locations Sales Origination Locations Lighdon
DB Legal Entity Offering Product: Deutsche Bank International Limited Deutsche Bank AG London Prime Brokerage
SECTION 4, MODEL & OPERATIONAL DATA:
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Systems Information Front Office Systems: Delta Settlement Systems: Global 1
SECTION 5, BUSINESS CASE
Business Case Transaction Volume: 5 Soln pa Receive: Bur3m
SECTION 6. ATTACHMENTS
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PAL will be reclaided to DEIL from the scornics leading transletion, whereby the mode to beneficed and leak at regime.
A profit opilit access DEIL and SEF has been acceded and will be facilitated by EB hympsensiting to the agreed amounts within DEIL.

Deuxiche Bank International Limited ("DBIL") Securities Lending structure





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- Steps I and 2.

 (v. On SD of the term date minus 8 days DBIL will agree with the leader to return shares to like of the

On SD of the term dame minus & days DBLL will agree with the legalet to return altered to the collateral.

SD, the altering and beautings DAF provincing the loan transactions. This records DBL long cash and then introduce hydring to DBL.

DBLL returns described by State of DBL.

Southerness DBL southe

Segs J and 2.

If steps 3 and 4 fail theistheabove will happen: If they satisfection DBIL will be sone avec and short into day cack to DBL. The official the saved steps I and 2 fail factory med NSS.

Non-Cante Officiarial - Incessing a

- day caches DEL. Dier Self-Linofes the searce! steps 1 and 2 fail factory are EMES.

 Non-cardicolalateral "Lacegorge .

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(Day). I DBM, receive the BM from Machine hit, and DBM, are notable to past it only the tender than the whole transaction will bM. Absquare HK in this incance will box prepair the GIO or day conference required for actual settleroid of the proof.

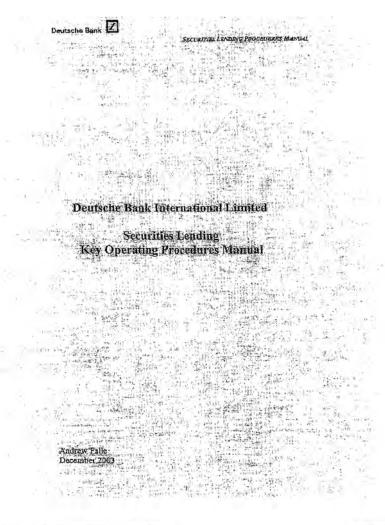
required for a small settlerest of the pioce.

If the G18 inflates it to the peocle SD = 1 the street it is that could fail as the street which constitutes the SD. In this case, both Macquinet RK Santh Ball, will have present a day-santy.

If the G10 inflates with Explainer SD = 1 the stock it packed to pellit by the lending that is not be measal to Ansoquine HK (prohipm becking it is on lent in the settlement days, when DBH, will be long stock and Macquine HK will have prepaid a day too carly in the both sequence of the proper states place and stock and interpretation of the prepaid collision in the proposal collision in a post stock and because HK will have prepaid to early too carly in consequence is into an extra day to worth of credit risk for the prepaid collision in any DBE prepay with the consequence in the prepaid collision in an about the prepaid collision in the prepaid collision in the prepaid to the consequence of the preparation of the preparation of the DB Groom. This for it is since the post of this for the consume and a linked to the step 1915 which stock the Macquinet in the step 1915 of the Macquinet place of the DB Groom. The flows will work as a deprecised before.

On SD -1 Macquinet HC properties G10 to gove to BBE. DB Crooms fire expressive collisions have with Macquinet HC by SD Teyer ding there with G10 greening for SSO gath (thus is DVP). The

DB-PS | 00000055



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	Deutsche Bank 22
	SECURITIES LENDING PROCEDURES MANDAL
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	6.D LEGAL/DOCUMENTATION COMPLIANCE 1
	6.1 CLUST ACCOUNT OFENING PROCEDURES/CHECKELS)
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Securities in the processes Manual 2.5 intra-day exposure limits.

2.5 Term Trades

2.6 Term Trades
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2.7 Pie-tride card Thrit checking

In the event that part of a trader brief to our leabe trade shall be expected and be expected.

counterpart.



2.15PSL Review

Each day a decided PAU is year to the deal by operabling, and is reviewed by the Deak H Country Managers. Any wisomatics should be investigated with the application parties and Read should sprom the PAU on a weekly best, all entire having been corrected.

2 to Collection

2.17 Buy-Ins

3.2 Imbalances

Trade Support use the Data Salamby Imbalance Support is use where bec



4:0 Risk/Expositres



4.6 Balance Sheet Limits

5.0 Segregation of Duties



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9.0 Credit

9.1 Setting of Clean Hinds

The organization of clean Hinds

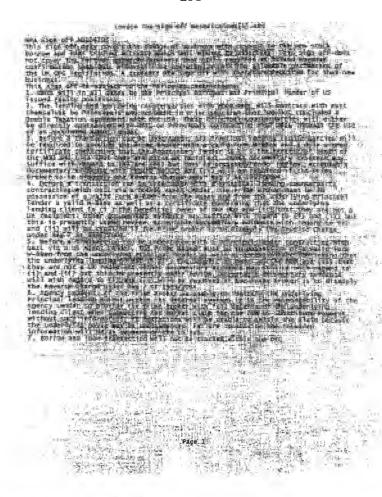
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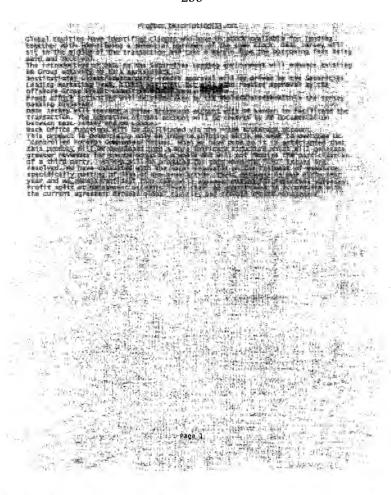
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D3-PSI 00000071

SHEARMAN & STERLING LLP

599 LEXINGTON AVENUE | NEW YORK | NV | 10022-6059 WWW.SHEARMAN.COM | T +1,212.848.4000 | F +1,212.848,7179

tpark@shearman.com (212) 848-5364 September 30, 2008

Via Hand Delivery

Mary D. Robertson Chief Clerk Permanent Subcommittee on Investigations 199 Russell Senate Office Building Washington, DC 20510

> Re: Maverick Capital, Ltd. Transcript Errata and Letter to Sen. Levin for Record of September 11, 2008 Hearing

Dear Ms. Robertson:

On behalf of Maverick Capital, Ltd. ("Maverick"), please find enclosed for the record of the September 11, 2008 proceedings the following: (1) a letter addressed to Senator Levin and the Permanent Subcommittee addressing questions raised by Sen. Levin during the hearing, and (2) a mark-up of the transcript of Joseph Manogue's testimony indicating all requested changes.

With respect to the transcript of Mr. Manogue's testimony, in addition to a few typographical errors, we have indicated one minor clarification that we believe does not change the substance or context of his testimony. The transcript (Tr. at 63:10-14) incorrectly suggests that Maverick LDC fund is "owned" by Maverick. Since the fund is clearly owned by its investors (and not Maverick), we believe that the suggested clarification better conveys Mr. Manogue's intent simply to confirm Sen. Levin's assertion that Maverick LDC fund is a Cayman Islands entity and that neither Maverick nor the fund has any employees there.

If you have any questions, please do not hesitate to contact me.

Very truly yours, Jai Parele 17: 3 me

Enclosures

ABU DHARI | BEUING | BRUSSELS | DOSSELDORF | FRANKFURT | HONG KONG | LONDON | MENLD PARK | MUNICH NEW YORK | PARIS | ROME | SAN FRANCIS |

SHEARIAN & STERING LIFT IS A LIMITED LIMBURY PARTHERSHIP ORD

PERMINENT SUBCOMMITTEE PERSONAL LIBRURY OF PARTHERSHIP ORD

EXHIBIT #35

U.S. SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Clarification submitted for page 63 (lines 13-14) of the hearing transcript as follows:

Mr. Manogue: It is registered in the Caymans and has no employees there.

Maverick Capital 360 Crescent Goart 18th Floor Dallas, TX 75201 (214) 880-4000 Phon (214) 880-4020 Fas

Maverick

September 26, 2008

VIA HAND DELIVERY

Sen. Carl Levin, Chairman c/o Robert L. Roach, Majority Counsel & Chief Investigator United States Senate Permanent Subcommittee on Investigations 199 Russell Senate Office Building Washington, DC 20510

> Re: Statement of Maverick Capital, Ltd. to Supplement Testimony Provided at September 11, 2008 Hearing

Dear Senator Levin:

As you requested, I respectfully submit the following to supplement my testimony at the Permanent Subcommittee's Hearing on dividend tax issues on September 11, 2008. Specifically, I would like to clarify for the record my response to the questions you raised regarding Hearing Exhibit #7, a series of emails marked as MAV0001115-0001122.

Background

Under an Interpretation promulgated by the Financial Accounting Standards Board that is popularly known as FIN 48, a company must accrue a liability for taxes unless it determines that it is more likely than not (i.e., a greater than 50% likelihood) that it is exempt from the tax. FIN 48 was originally scheduled to take effect at the beginning of 2007. In late 2006 Maverick's tax personnel therefore conducted an analysis of various transactions including its dividend enhancement stock loan transactions under the FIN 48 standard and sought the advice of tax professionals at Ernst & Young LLP in connection with its review. The email chain reflected in Hearing Exhibit #7 was created in the context of Maverick's FIN 48 analysis and addressed two separate and distinct issues.

Points of Clarification

The first issue addressed in the email chain related to the United States tax liability of Mayerick's offshore funds with respect to stock loan fees earned in transactions that were totally unrelated to its dividend enhancement stock loans. In these transactions, the Maverick offshore funds earned fees as a result of lending their securities to United States persons without regard to whether a dividend was payable during the period of the stock loan. Some borrowers withheld

Sen. Carl Levin, Chairman September 26, 2008 Page 2

United States tax from the payment of stock loan fees and others did not. With input from its Ernst & Young advisors, Maverick determined that there was less than a 50% likelihood that its offshore funds were exempt from United States tax and therefore made an accrual for United States tax liability related to the stock loan fees.

In the case of the dividend enhancement stock loan fees received by the Maverick offshore funds from borrowers in the Cayman Islands and certain other jurisdictions, Maverick, with the support of its Ernst & Young advisors, reached the conclusion that there was a greater than 50% likelihood that the Maverick offshore funds were exempt from United States tax. In the words of Ernst & Young's Matt Blum (MAV0001119), "I can accept the client's assertion that > 50% chance of succeeding if transaction properly structured." As a result, Maverick's offshore funds have never made any accrual for United States tax liability related to receipts associated with their dividend enhancement stock loans, nor have they made any payment of such tax to the Internal Revenue Service.

I hope that this letter clarifies my testimony with regard to the Maverick dividend enhancement stock loan transactions. Please contact me if you have any further questions.

Sincerely yours,

Joseph Manogue Treasurer

IRS STATEMENT FOR SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS HEARING RECORD REGARDING NOTICE 97-66

Notice 97-66 was issued in 1997 to address the potential duplication of tax liability in various securities lending transactions. However, the IRS is conducting a number of investigations where we believe that taxpayers have attempted to apply Notice 97-66 to highly structured transactions that were not intended to be covered by the Notice. The IRS is aggressively pursuing several such cases and will continue to do so. We have tools under current law to attack those highly structured securities lending transactions, as well as certain highly structured equity derivative transactions.

Notwithstanding our current capabilities, I am committed to raising this matter with the new Administration to determine whether any changes should be made to Notice 97-66. As I stated at the hearing, the Notice involves issues beyond tax and, as such, any changes should properly be considered in a broader economic context.

Permanent Subcommittee on Investigations
EXHIBIT #36

Unknown From: Sent: Thursday, November 18, 2004 1:50 PM Frank: ANTHONY FAUCI (CITIGROUP GLOBAL MARK) [stauci@bloomberg.net] Thursday, November 18, 2004 1:50 PM Frank KOZAKIEWICZ (AMARANTH GROUP INC.)) Ri Anthony. I have a general question for you. Long positions we place in swap with you, will you lose those back out to the street ever? Reply: not resilty but we could if we wanted to, generally there is no makt for the atuff we are long Reply: we we marked for a specific position not to be leat out, would you be able to do that for us? Reply: of course

CONFIDENTIAL TREATMENT REQUESTED BY CTTIGROUP GLOBAL MARKETS INC.

CITISWAPS 00524

Permanent Subcommittee on Investigations
EXHIBIT #37

STRICTLY CONFIDENTIAL - NOT FOR CIRCULATION AND STAFF ONLY

CITI_PSIWHTAX002282

----Original Message--From: Cutts, Mill (EQTY)
Sent: Tuesday, March Os, 2005 11:53 AM
To: Tuths, Anthony (FIS)
Co: Henger, Steven (FIS); Grbic, Susan (FIS); Absel, Keith J (FIS)
Subject: RE: Equity Swap Practices

Tony,

Here are your answers:

- 1. Our transactions are done within the scope of the guidelines you have set out for us:
- 2. We see some increase in activity, not alot, maybe a 10%-15% increase to our normal daily volumes. We activaly turn away trades if they are going Exwith 3/4 days and we see other brokes/dealers doing the same (forces clients to clean up their act and get organised). Since the Street is asking this of clients you tend to find alot of clients simply leave the positions on for a longer period so that the stock is on long swap for 2-3 Ex Date cycles. In non US equities we don't like seeing any activity at least 1 week before Ex Date and in some markets only pay 85% and refuse to pay 100% is: Netherlands because of current legislation and the firms own opinion on the country.
- 3. Its not for us to tell you what Industry Groups you dan/cannot join, that is your prerogative. If anything sharing comments with SIA members will give you the "Heads Up" on pertionnt issues. As to approaching IRS/Treasury Dept on guidance on single equity swaps and W/H tax, we would prefer if a prominent Law firm like David Polk intermediated for you rather than the Tax Dept. having to go face-to-face with the authorities. Depending on the US Governments mood and "what has Citigroup has done lately in the press" your answer may vary when your there in person vs via a law firm, its much more generic and you have annonymity (like a swap!).

Can you please tall us the counterparties who are exhibiting contern? Would like to know.

Hope this helps.

Regards

W121

Prom: Tuths. Anthony (FIR)
Sent: Tuesday, Narch 08, 2005 10:10 AM
To: Cutts, Will (EQTY); Ellis, Laonard (EQTY); Breen, Daniel P (EQTY);
Henry, Jonathan (EQTY)
Cc: Henger, Steven (FIN); Grbic, Suean (FIN); Antel, Keith J [FIN]
Subject: Equity Swap Practices
COMM.

CONFIDENTIAL TREATMENT REQUESTED BY CITIGROUP GLOBAL MARKETS INC.

CITISWAPS 00076

It has come to the tax department's attention that some of our competitors have formed a practice of permitting clients (e.g., hedge funds) to go long equities on swap just over dividend dates in an apparent effort to avoid source country withholding taxes. The tax departments at these competitors are concerned about this practice, especially with respect to U.S. equities and the lack of guidance regarding single equity swaps.

What I would like to know from each of you is:

- Do you know of transactions that are done outside the scope of our equity swap guidelines (attached), which require one-year swaps with a minimum 45 day period till early termination?
- Do you normally see increased evap activity on U.S. equities just hefore record dates, and if so, how much more activity and what is the typical term of a swap put on just before a record date?
- Would you be opposed to Citigroup tax joining with an industry group (e.g., Securities Industry Association), in approaching the IRS/Treasury regarding guidance on single equity swaps and withholding tax implications?

2

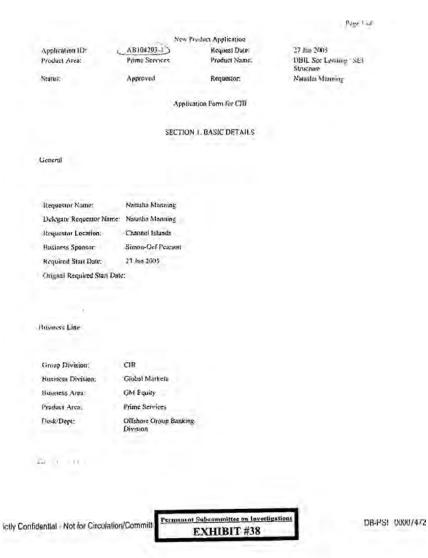
Anthony J. Tuths Citigroup Global Markets, Inc. Director - Corporate Tax 188 Greenwich Street 22nd Floor New York, N.Y. 1001) (212) 816-1364

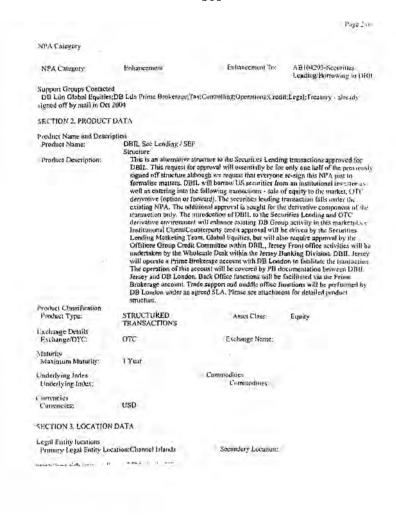
> CONFIDENTIAL TREATMENT REQUESTED BY CITIGROUP GLOBAL MARKETS INC.

CITISWAPS 00077

STRICTLY CONFIDENTIAL - NOT FOR CIRCULATION/SUBCOMMITTEE MEMBERS AND STAFF ONLY

CITI_PSIWHTAX001835





			Page 111
Trading Locations Primary Proposed Locali	on: Channel Islands		
Additional Proposed Loc	arims:London	Exesting Locations:	London, Frankfurt, Mew York, Sydney, Tokyre 181
Client Torget Group Custimer Type:	Financial Institutions	Customer Locations;	Various
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Model & Pricing Informati Model Name:	ion Not applicable	Pricing Sources:	
Systems Information Front Office Systems:	iDelta IMS	Sentoment Systems:	Global LeSpear
SECTION 5. BUSINESS	CASE		
Besiness Case Transaction Volume:	100 per month	Revenue:	Eur 10m
SECTION 6. ATTACHM!	ENTS		
Attachments DBIL See Lending Nocy.doc.	g alternative structure (NPA)	(See nexal page)	
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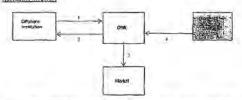
08-PSI 00007474

Denstehe Bank Juternational Limited ("DBIL") Equity Finance afternative structure

Hating the Translation SEF to homes the use of one of the offiches group has been growing over at least a few years and GePS or even equifies as a division has a distinct deability from this.

Hroady speaking, there are subjected in Godines had officere which are consistently included in toucher picking flowbra, that would be burrowed do an exclusive basis for use which we consistently included in toucher picking flowbra, that would equition burners to the currently not competitive in dust pricing as my borrow of those US equities (equites a deduction and appreciate of withfulfulfulg case, on dustriating payments equal to 15% of any divident. Our competition of the base to account for this true (given some of their offshere envertures) and can therefore offshere cause appreciate price to lenders. A non-US besty endry is attentive to the exposul of whithouthing us, regulated in the desired of a ratheody to Iff (providing persuase criteria are not), therefore affavoing us to be more connectative with our pricing.

Alternative Structure



OR

A non-US treaty resident entity ("the lender") bashs US againet. Fin in five normal course of business is to lead these smoks to the moder. It lends DBIL a bashed "the hashed" of such requiries.

In few of the bashed DBIL pledges collateral equal to the value of the stock "a small imagin tilbs prediction of the stock as standard in the general according marked. The collateral needs be either east (USD) or aroutine raping mercely of red dest could be GBI.

Simultaneously to 1 and 2 above DBIL would said the hashed to the market (probably one OK. Louter market is fixed or USD exist, IDVP).

Are a bedge to 1 above either:

DBIL have evil explore from DBIL and sells a put option to DBI, twith a maturity may be the control of the collateral treatment of the plant of the collateral printing DBIL the right to be yet about a wife a basis of the standard of a single relation above them to the collection of the DBIL to DBIL.

DBIL collateral mental be upon, the residing periodic above population by DBIL to DBIL.

DBIL enters into a furward (ugain physically settled) agreeing to buy the shares back at a furward price, again there tould only be a payment from DBIL to DBL

The rest is not part of the NPA has exceptating the pinters of what we may do to map a positive financing



- Independently, DB Landon Branch ("DBL") buys a swep our a similar backet in terms of questing and consultation from one of its institutional Chemic (humbook retailornthys). The series of the comp would infirm that of the application forward above (ranging from 1 week to 40 days). As assumption we called make would be that the Institutional client buys alteres from the needed to bridge this things.

More detailed Cash and cultateral Flore

The transaction is fairly simple to outstream all bimplications arise from associated settlement, embrines and making polluteral. Described below are some of the variations and problems that that occur and how an appropriate local with them.

On Inde date DBB, would arrange for the loan of a beaker of US equities I' the backer" in 3 days once (the controls with the standard US performancy sycle) from the lender. Cofiners will be required as more in the p 2 shows on this could be in millerent form.

Cosh collarged: inception
Supplied exhibitations are DVP (delivery versus payment) and ning that the cash indicated and the
basis is bound more at the sense time. The flow would lie set follows:

- Stops 1 and 3

 1. Trade that ["TD"), agreement of the lorus likes place:

 1. Settlement that p"SD"), DBIL explice into day funding as pletdyc coult collineral as the kinder 1979 borrow this cash into a day from DBIL.

 1. The cash and stock move of the same time feaving DBIL tung stock and the lender long state.

- Stept 3 and 4

 W. Simultaneously (or (a) above) on TD DBU, executes a tale in the market (a broker) on a T+3 bots.
 DBL also cures into a protect or 60% with DBL using the sale price on the reference price.

 W. Dat SD (above same 1 and 2 Jungon) DBL receive stack (rect, (ii)) above and use thin to write the DVP sale transaction. DBL receive USD eath.

 W. DBUL rose tale long cash to return the inter-day footing from DBL.

Stillowers fails - Steps 1 to 4 histopies

Steps 1 and 2 must hippon trigition as the sorting point occurs with the bate-day tunding from DBL unviving to DBL. If the intra-day box selfuts and the DVP selfutement with header is not possible on part of the better (e.g., same stacks are not available) from any waters were absolute to restroy and to DBL. If it is too late to retrieve has to DBL, the neutron will be swept. In the case of stock not settling into DBLs from the trade, the sale should be protected, granted the should be protected in members of the case of stock not settling into DBLs from the unstable to the close it found in the stock of the stock of

If this negs 1 and 2 happen had perhaps they take place too has during the SD for 3 to settle, DBPL will be long stock and short the inter-sloy cuts heading in DBL. As part of DBLC spentral business is Barconistication and solid place and the DBL. We see religious on legal right to Office for any short cash to occur-aquinot extraing fooms. If this happens the a night, oversight handing in this system whould be peebled under the transporters DBL has wish NY. Again, by prostrict the set and option/CMB stoud for currially exacelled, if not the safe will full itsering DBL in the same position places in the fall. The will be inverse sums pursuantly, and count of interest sums pursuantly, and count of interest sums pursuantly and described above.

Rup 3 in DVP and the speck and each movement occur at the same time. As these only we the market broken involved any fail would put us that in the purition above.

Cash collateral - unwind The sawind in reverse should flow as follows

- (Sign Food 4).

 5. On SO of the term these of the protect misses 3 hastoests days promotily the Salpation date "VD" for the options/feet (DBIL would buy that of from OBL as the exercise price of the options/feet, DVP against USD cash.

 1. DBIL reposit introduct fromfolg from DBIL in order to settle the DVP procedure.

 16. The chaires and cash move DVP Existing DBIL long stock and sheet introduct from the DVP.

- begin I and 2

 iv. On 5D of the term date induse 3 days 12BH, will agree with the fender to return interest in lieu of the culturary (se coincide with (iii) above)

 y. SD, the durrecased cosh sports DPP unwinding the lasts grosserities. This feaver DBH, long each and short interestsy funding to DBL.

 iv. DBH, recorns the interestsy funding to DBL.

Neulanent faits - Steps I as a Unated Logist Jane 4. As these separate properties of the fails DRH. will be left with the intra-day finding. Fam DRL. Depending on the fine of day of the fail this may be extended to DBL before the final deadling for day fordings a varyety for example of the many part of the fail this may be extended to DBL before the final deadling for day fordings a varyety for example of the many part of the material particles above.]

iagn I and I. If then the above will happen. If they settle then DBH, will be long stock and that introduced by one to DBH, in this case DBH will rely on legal right of offset against existing loans. This will also be the case it segs I and I for they are DVPI.

Sine-each collustral - largetion.
Where constant colluteral is required by the lender settlement of the colluteral normally rates place one-instance day before settlement of the mock if "jungay"). In this case the flow model be as follows:

- Sept 1 to 4

 1. The agreement of the loan takes place (again SD is 70 + 3 days)

 2. SD mines (PSD I" on TD + 2), DBIL require non-coult collected ("010") which steey get from a region wide (DBI).

 2. DBIL (people yith G10 to the fender on SD 1

 3. SD the brinder gives stock to DBIII, (against the propagation of G10).

 2. DBIL one the work to settle DVP with the market broker. The contracted is used in statisty the report of DBI.

In this context the repo GIO is delivered and day before the each souler which implies an offset of exposure of against existing losses made by DOLL to DOL. The repo exposure will never exceed the frame instanting.

Sectionism failte-river I no 4 theophina If the DBL rape fails and DBBL do any mercive the G10 (SO - 1) then the whole transaction will fail as SBBL can be treepy using set to stock on SD. All parties about the flat although DBIL may need to entire valual settlement of the sale so the market broker and the part cell fairing DBL (to accommodate the extra day settlement extre). If their are possible in market fail will occur and we are facts to the situation flavorited above of standard market interest clames.

(FDH), receive the G10 from FDD, and D0H, are not object to pass it on to the lender then the whale transaction will fail. DBL to this instance will have prepaid the G10 to day carrier than required for count settlement of the check, which will use the offset described above. The position with extending terms of (the dad and options is the same OK the market G1 and interest chem is the same.

If the G10 makes it to the lender 5D - 1, the first leg that could fail at the stock coming to DBIL on 5D. It the rate the signation of exactly at describe above.

If the G10 scales with the lender 50 - 1, the stock is passed to DBIL by the lender but can not be scaled to the worker blocker than the position in also as above.

Nits tribere propay takes place a day too early the consequence is just on extra day's worth of credit tisk on the prepaid collateral (and probably an extension of the repo by a day).

Non-cash collatered - narelini
This opin is fairly simple as follows (ablumph there may be a requirement in "possipay" in, provide collateral to the leader for an extended - this is not a frequent requirement). In reverse order:

- Stipe I and 4

 L. On YD of the options (Fird Dis), they chares from the DBL of the exercise price of the options: Tivid DVP against USO cards

 ii. DBL repest ultra-day funding from DBIL to saide the DVP purchase.

 The shares and each more DVP terving DBIL long speck and share invar-day funding to DBL.

- Size 1 and 2

 W. On the same VD DBIL will agree with the leader the renew of the shown in tien of collateral (to constitute with (0 aboves)

 On SD the shores will move Fup (as the leader bay G IV already), either the leader will return the CIII same day or there will be a pooppay for me day.

 M. If the G10 is returned some day than the separando of this point and the CIII is returned for RSD cash, the each satisfying the inter-finding. If the G10 is returned the following day then the reported by after sarved.

Stribment fails—steps 1 to 4 Throtal.
If the purchase from DBL fails than DBLL will have no shock in return and the whole legatured reported.
The purchase from DBL fails than DBLL will be left with inter-day Frading from DBL and depending upon the time of Chry citizer this will be returned or swept from the nature by treature.

If the purchase settled then DBHE will be long stack and short inter-day click. If nothing else settles then the short cach will offset against easing loans as described himse.

If the stock sentles back to the lender and DBIL do on receive the GHO then the position at the same as above although in this case they have no stock.

Simon Pearson 02/14/2007 12:11 PM To: Caroline-CON Richardson/DMGCON/DMG UK/DeuBa@OBEMEA
ce: Harcharn Purewal/DMGOPS/DMG UK/DeuBa@DBEMEA, Kathryn
Marsden/db/dhcom@DBEMEA, Luarrence Pillion/db/dhcom@DBEMEA,
Peter Lau/DMGCON/DMG UK/DeuBa@DBEMEA, Will
Keitlewel/DMGCON/DMG UK/DeuBa@DBEMEA
Sobject: Re: Fw: DBIL - AIG TRACKED STOCK LOANS

Who booked them?

Simon Pearson

Inventory Management - Complex Equity Office +44 207 547 3237 Mobile/Blackberry +44 7802 941 691 Home +44 1342 833 654 Fax +44 113 396 1598 Deutsche Bank AG London Global Markets I Great Winchester Street London EG2N 2EQ

Caroline-CON Richardson/DMGCON/DMG UK/DeuBa

Caroline-CON Richardson/DMGCON/DMG UK/DeuBn 92/14/2007 08:50 AM

To Simon Pearson/DMGEQ/DMG UK/DeuBa@DBEMEA Peter Lau/DMGCON/DMG UK/DeuBa@DBEMEA, Kathryn
Marsden/db/dbcom@DBEMEA, Will
ct: Kettewell/DMGCON/DMG UK/DeuBa@DBEMEA, Laurence
Pilion/db/dbcom@DBEMEA, Harchare
Purewal/DMGCPS/DMG UK/DeuBa@DBEMEA, Laurence
Subject: Fw: DBIL - AIG TRACKED STOCK LOANS

Simon

Just to let you know that there is a \$152k nil to P&L caused by an incorrect payment of tax to the IRS on borrows from AIG in Jersey. The borrows where incorrectly booked to be tracked through DTC, therefore AIG has received 70%, we have been charged 100% and the balance of 30% paid to the IRS. In theory, this is recoverable from the IRS, however after speaking with Harch on the practicalities of this we believe taking to P&L now is the most prudent approach.

In the background, Harch will create a reclaim trade in CAM and BAC will create a provision against it (bence the PL hir). The claim to recover the funds against the IRS will be made by the TaxOps team and if recovered, then the credit will back to IM P&L.

Please let me know if you have an queries.

Regards Caroline

GM Equity CIB Controlling - BAC

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DB-PSI 00007397

```
Tel +44 207 545 9299
Email: caroline-CON.richardson@db.com
— Forwarded by Caroline-CON Richardson/DMGCON/DMG UK/DeuBa on 14/02/2007 08:11 —
            Ken
Ballentine/DMGOPS/DMG
UK/DeuBe
                                                To Caroline-CON Richardson/DMGCON/DMG UK/DeuBa@DBEMEA
            14/02/2007 08:10
                                           Subject Fw: DBIL - AIG TRACKED STOCK LOANS
Caroline,
As requested.
Kind Regards
Ken
   Forwarded by Ken Ballantine/DMGC/PS/DMG UK/DeuBa on 02/13/2007 09:54 AM ---
             Ken
Ballantine/DMGOPS/DMG
UK/DeuBa
                                               To Harcharn Purewal/DMGOPS/DMG UK/DeuBa
            02/05/2007 02:30 PM
                                            Subject DBIL - AIG TRACKED STOCK LOANS
Harch,
Here is the breakdown of trades and cash items for the tracked positions we had with AIG
I have attached the DTC reports and a screenshot of the outstanding nostros, where we have been debited 100% dividend.
Total USD @100%$507,849.13
Total overpayment @30% $152,354.73
Many Thanks
                       1
ALG TRACKING COC ALG NOSTHOS NO
Cusip 717081103 - PFtZER
305.215 Nominal = Dividend @100% $73,251.60 - 305,215 Nominal = Dividend @70% $51,276.12
Cusip 774341101 - Rockwell Collins 6,000 Nominal = Dividend @100% $960.00 - 6,000 Nominal = Dividend @70% $672.00
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Cusip 931142103 - Wal Mart 71.940 Nominal = Dividend @100% \$8,576.00 - 71,940 Nominal = Dividend @70% \$6,003.20 Cusip 983919101 - XILINX INC 63,300 Nominal = Dividend @100% \$5,697.00 - 63,300 Nominal = Dividend @70% \$3,987.90 Cusip 038222105 - APPLIED MATS 324,170 Nominal = Dividend @100% \$16,209.00 - 324,170 Nominal = Dividend @70% \$11,346.30 Cusip 438516166 - HONEYWELL 384,020 Nominal = Dividend @100% \$60,987,18 Cusip 166764100 - CHEVRON CORP 105,957 Nominal = Dividend @100% \$35,097.64 - 105,957 Nominal = Dividend @70% \$38,558.35 Cusip 291011104 - EMERSON ELEC 11,480 Naminal = Dividend @100% \$5,108.60 - 11,480 Naminal = Dividend @70% \$3,576.02 Cusip 30161N101 - EXELON CORP 16,890 Nominal = Dividend @100% \$6,756.00 - 16,890 Nominal = Dividend @70% \$4,729.20 Cusip 30231G102 - EXXON MOBIL 641,505 Nominal = Dividend @100% \$205,281.60 - 641,505 Nominal = Dividend @70% \$143,697.12 Cusip 501044101 - KROGER CO 37,660 Nominal = Dividend @100% \$2,447.90 - 37,660 Nominal = Dividend @70% \$1,713.53 Cusip 773903109 - ROCKWELL AUTO 183,730 Nominal = Dividend @70% \$28,937.48



Hi Fabrice. I work with Peter and will be covering the US book here at Deutsche.
Peter forwarded me your request from last week and this is what we could possibly do. Thenks, Chirasa

Ticker Oty ASD US 48,812 CTX US 31,766 PHM US 59,825 RPN US 15,882 TOL US 25,802

----End Message

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Dividend Yield Enhancement Meeting with Lehman

Page I of I

Lane-John, Debra

From: Qaiser, Amna (Amna, Qaiser@ny.email.gs.com)

Sent: Thursday, October 05, 2006 9:33 PM

Chropuvka, Gary To: Cc: Khodadadi, Arlen

Subject: Dividend Yield Enhancement Meeting with Lehman

Lehman came in to talk about dividend yield enhancement service that they are able to provide us. For our European positions, we went over three different options that we may have as far as dividend yield enhancement is concerned and the pros and cons for each of the options.

- Single stock yield enhancement: In this case we can negotiate yield enhancement on a stock by stock basis.
 The benefit of this approach is that we can negotiate terms with a number of counterparties and pick a specific one based on the yield offered. This however is operationally burdensome.
- 2. Rehypothecation; With rehypothecation, dividend yield enhancement is offered on the entire portfolio. We still keep the right to remove specific names if we get a better rate with another counterparty and the process is much easier than single stock yield enhancement because of fewer operational headaches. In order to receive yield enhancement be security should be in the portfolio three days prior to the record date and must remain in the portfolio for a specific period depending on the stock in question.
- 3. Exclusive: In this case the portfolio is reviewed on a yearly basis and based on the expected dividends in the portfolio an upfront payment is made. A collar is also placed on the expected dividends so that if the dividends vary within the collar the payment does not have to be partially reimbursed or increased. Beyond the collar, the portfolio may have to pay back any expected dividend value that was not realized.

Lehman will send us indicative rates for the various markets shortly. They felt that rates would be comparable in

For US positions in our offshore funds, another option is somewhat similar to rehypothecation where a portfolio is reviewed on a monthly basis and yield enhancement offered. The actual enhancement would be done through a slock loan agreement and should be theoretically seamless to us, but would require some sort of collateral management by our back office (collateral could be either in the form of securities, short tem notes, or casts). We again, maintain the right to recall the stocks.

Some of the Issues to keep in mind when getting involved in yield enhancement are:

This should not be done for pass-through funds (i.e., our onshore funds) where clients would rather received the dividends net of taxes instead of a manufactured dividend.

Some things to look into:

- 1. Emerging markets securities and the dividend yield enhancement available on these names
- 2. Canada, and Japan may be of interest for yield enhancement.

3/3/2008

Confidential Proprietary Business Information The Goldman Sachs Group Inc. Produced Pursuant to Senate Rule XXVI(5)(b)(5)

Permanent Subcommittee on Investigations EXHIBIT #39

GS-PSI-04242

62/86/2608 13:31 6172842428

BOSTON GLOBAL ADVISO

PAGE 83/85

Goldman Sachs Agency Lending | Paterborough Court | 133 Fleet Street | London EC4A 28B Regulated by the Financial Services Authority

September 21, 2004

The Directors Goldman Sachs Funds SICAV FAO: Mr. Ted Sotir Managing Director Investment Management Division Christohurch Court, 3rd Floor 10-15 Newgate Street London, EC1A 7HD United Kingdom

Dear Sirs:

In follow-up to our earlier discussions with Ted Sotir, I am writing to summarise the terms of our proposal to provide securities lending services through Goldman Sachs Agency Lending ("GSAL"), our U.K. agency lending

For the second year of the lending program, we are offering an overall revenue guarantee of \$3.2 million (vs. \$2.0 million in Year 1) across the Luxembourg funds listed in Exhibit 1. Key terms of our proposal are as follows:.

- Agency securities lending fee equal to 15% of the gross lending revenues (consistent with last year);
- GSAL will pay transaction costs related to securities lending, consistent with the fee schedule in place with the custodian;
- One year guarantee term extending from July 15, 2004 through July 14, 2005;
- · Estimated ennual net lending revenues of US\$4.5 million; and
- Subject to the pracise terms of the relevant agreements, including indemnification against borrower default.

Moving the contract term to a July to July cycle will facilitate a more timely and accurate annual review process by avoiding expiry in the middle of the busy Spring lending season (March to June).

Confidential Proprietary Business information The Goldman Sachs Group, Inc. Produced Pursuant to Senate Rule XXVI(5)(b)(3)

GS-PSI-00432C

82/88/2888 13:31 6172842428 BOSTON GLOBAL ADVISO

PAGE 84/86

September 21, 2004 Page Two

The revenue guarantee is subject to the assumptions outlined below along with certain caveats regarding potential changes in the funds' portfolio composition, and the tax or regulatory environment.

- 100% of each portfolio will be available to lend;
- All stocks will be available for loan over the dividend record date(s);
- Each portfolio will be made available for lending through the GSAL agency securities lending programme for a period of 12 months from the date specified in the relevant agreement(s);
- The funds' custodian will cooperate with GSAL in the movement of securities and cash in connection with the lending program;
- Dividend entitisments for the Funds will be in accordance with the attached schedule (see Exhibit 2); and
- Loans will be collateralised with G10 debt excluding Japan and Italy.

in the event that the portfolio manager liquidates positions of the Funds, there In the event that the pointed manager industries positions of the Funds, there is a change to the composition of the Funds, the Funds are made unavailable for lending, or there is a change in asset class of the Funds, any of which in the reasonable opinion of GSAL has a material adverse affect on the constitution of the portfolios of the Funds and GSAL's use of the Funds, then GSAL reserves the right to give notice to the Funds that it wishes to revise the guaranteed fee, in which case the Funds shall agree to renegotiate in good faith an appropriately adjusted guaranteed fee.

In the event that any securities become unavailable for loan due to changes in a country's applicable law, regulation or market practice, or there is a change in the fiscal regimes of these countries, then the stated guaranteed lees above shall be subject to good felth renegotiation at that time.

Sarah Cadogan

Executive Director

Tred Mointine

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GS-PSI-00432D

82/88/2888 13:31 6172942428

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Exhibit 1

The fending activity of the following portfolios is subject to these procedures:

	1	224.7	
G420	lending	Non-US fixed income	GS Global Fixed Income
G423	landing	IUS Equities	IGS US Vatue Opportunities
G424	lending	US Fixed Income	GS Mortgage Back Secs
G425	lending	US Equities	GB US Value Equity
G440	lending	Non-US Equition	GS Global Equity
G443	lending	Non-US Equities	GS European Specialist
G444	rending	Non-US Equities	GS Asla
G445	lending	Non-US Equities	GS Japan
G446	lending	US Equities	GS US Core Equity
G447	lending	Non-US Equities	GS Global Technology
G448	lending	Non-US Equities	GS Europe
G449	llending	Non-US Equities	GS Global Emerging Mkts
3453	lending	Non-US fixed income	GS Global Broad Fixed Inc
G454	lending	Non-US Equities	GS Sterling Fixed Income
G455	lending	Non-US fixed income	GS Sterling Broad Fixed Inc
G458	lending	Non-US Equities	GS UK Equity
3467	tending	Non-US Equities	GS Continental Europe
G460	lending	Non-US Equities	GS Japan Small Cap
G481	lending	Non-US fixed Income	GS Global High Yield
G463	lending :	US Fixed income	GS US Fixed Income
3464	lending	Non-US Equities	QS Global Emerging Mics
G466	lending	Non-US fixed income	GS Euro Fixed Income
G467	lending	Non-US Equities	GS Europe Core Equity
G469	lending	US Equities	GS US Growth Equity
G471	lending	Non-US Equities	GS Global Consumer Growth
G472	lending	Non-US Equities	GS Global Financial Services
G473	lending	Non-US Equities	IGS Global Health Sciences
G474	lending	Non-US Equities	GS Global Infrastructure
G475	lending	US Equities	IGS US Growth Opportunities
G400	Colleteral	INA	Boston Global Advisors

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Goldman Sachs Luxembourg Funds Securities Lending Proposal - 2005 Dividend Cycle Assumed Tax Withholding Rates

	Net Withholding Rate
Austria	15%
Belglum	25%
Canada	25%
Denmark	28%
Finland	15%
France	25%
Germany	15%
Italy	27%
Japan	7%
Norway	25%
Spain	15%
Sweden	30%
Switzerland	35%
United States	30%

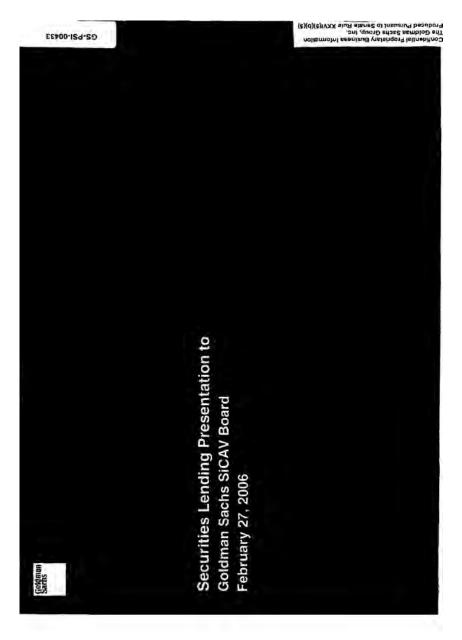
<u>Note:</u> The above withholding rates served as the basis for our revenue estimate and revenue guarantee.

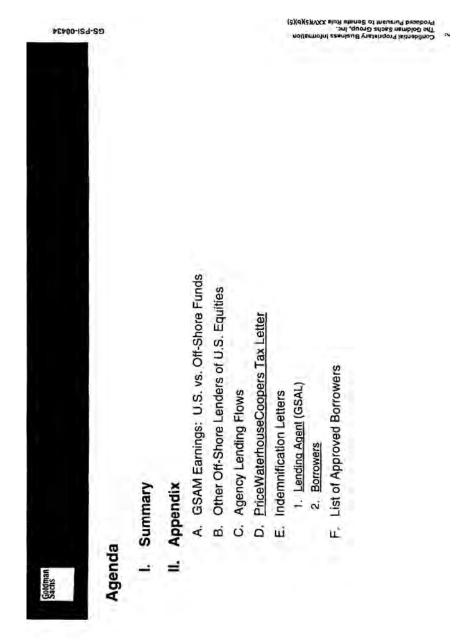
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GS-PSI-00432F





enhancement (potentially tax avoidance) because the market risk is generally greater

than the revenue potential from the dividend enhancement opportunity

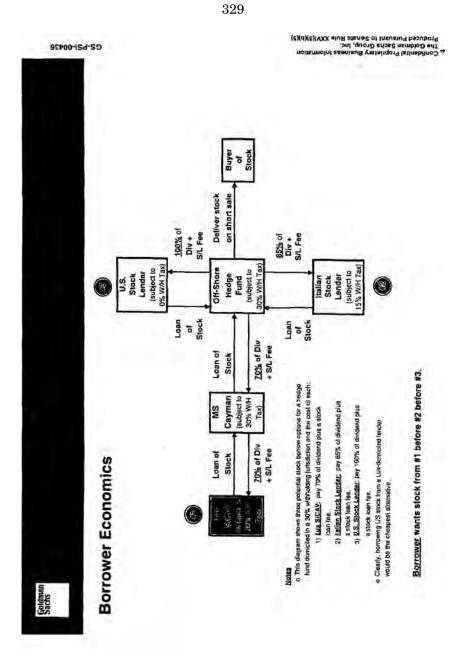
Longer term borrowing cannot be proven to be associated only with dividend

Government

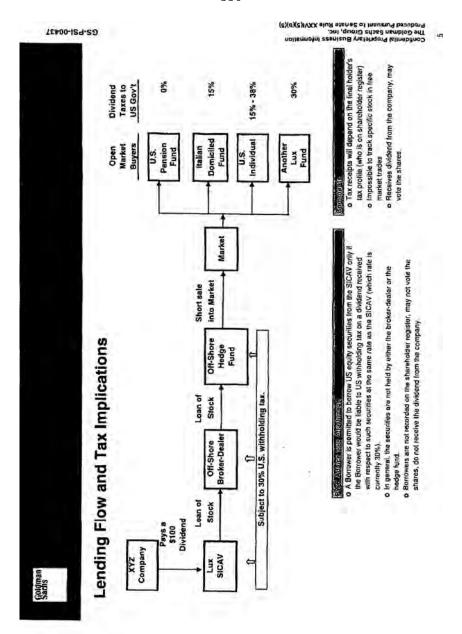
328

Confidential Proprietary Business Information The Goldman Sachs Group, Inc. Produced Pursuant to Senate Role XXVI(5)(b)(5) CS-PSI-00435 It is likely that end owners of stock are institutions/individuals which are not subject Short-term borrowing around dividend record dates is more likely to be associated due to lower borrowing cost (i.e. borrower pays 70% of dividend plus a borrowing with explicit dividend enhancement transactions and reduce payments to the U.S. Global Marketplace first borrows from regions with highest withholding tax rates to 30% withholding (as stock is delivered into the market through a short sale) Makes sense that a Lux fund might earn 18 -23 bps and a U.S. fund earns 1-2 bps Lux fund should establish minimum loan duration to minimize this risk Lending U.S. Equities - Summary

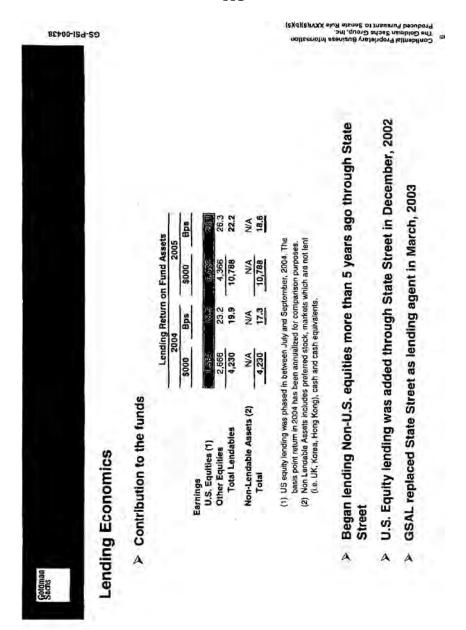


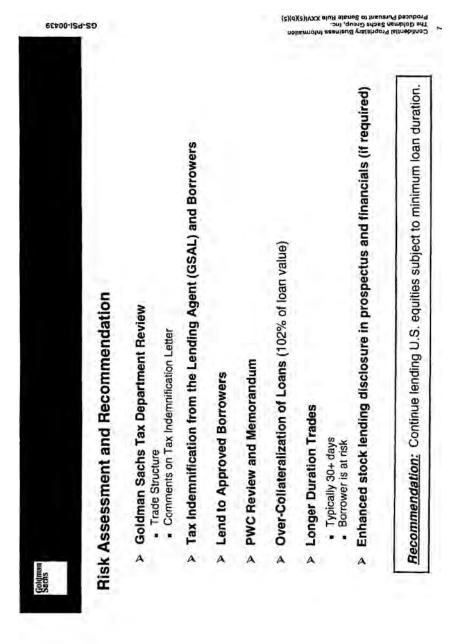


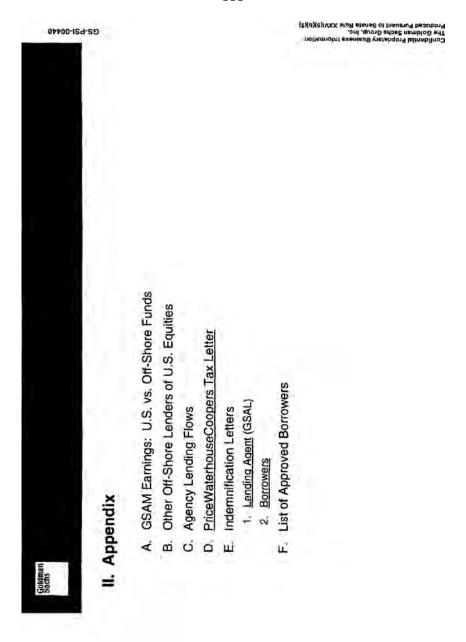


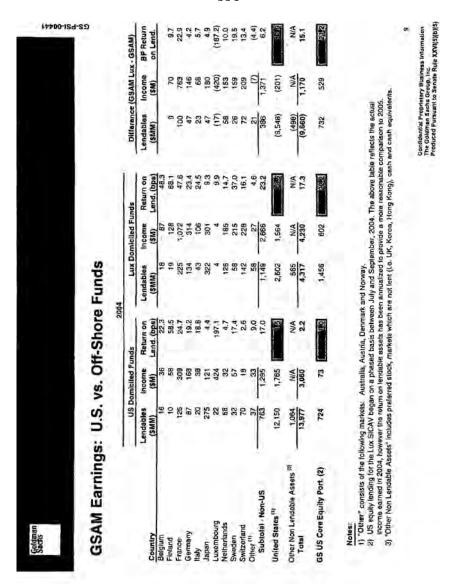












CS-PSI-00442



GSAM Earnings: U.S. vs. Off-Shore Funds

	d SN	US Domiciled Funds	spur	Lux D	Lux Domiciled Funds	unds	Difference	Difference (GSAM Lux - GSAM)	x - GSAM)
Country	Lendables (SMM)	Income (SM)	BP Return on Lend.	(SMM)	income (SM)	BP Return on Lend.	Lendables (\$MM)	income (\$M)	BP Return on Lend.
Belgium	đ.	171	37.8	59	475	91.1	13	304	43.2
Finland	2	9	6.8	31	98	27.8	54	80	19.5
France	17	432	25.3	293	1,130	38.5	123	169	13.2
Germany	138	347	25.1	197	356	18.1	99	6	(7.0)
Italy	56	41	15.8	92	136	17.9	20	76	2.3
Japan	390	184	4.7	446	590	13.2	57	406	8.5
Luxembourg	15	122	78.9	on	v	V	(2)	(122)	(78.9)
Netherlands	100	S	5.8	191	373	19.5	101	320	13.6
Sweden	52	34	11.8	82	802	96.7	53	675	74.8
Switzerland	69	38	5,6	146	488	33.0	79	450	27.4
Other III	138	173	12.5	128	25	6.1	(10)	(148)	(10.5)
Subtotal - Non-US	1,119	1,601	14.3	1,660	4,366	26.3	541	2,765	12.0
United States (2)	17,424	3,134	P.	3,192	6,422	- MC-1	(14,231)	3,288	Sign 1
Other Non Lendable Assets (2)	1,613	NA	N/A	963	NA	NA	(651)	A/N	N/A
Total	20,156	4,735	2.3	5,815	10,788	18.6	(14,341)	6,053	16.2
GS US Core Equity Port. (2)	874	90	(Fe)	2,373	5,527	8,9%	1,499	5,477	20%

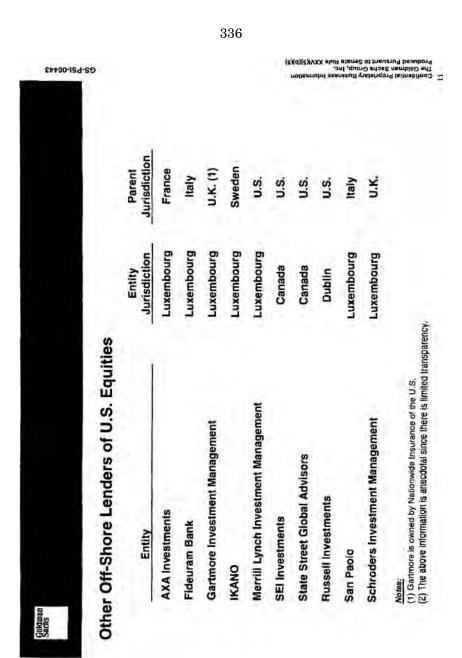
Notes:

1) "Other" consists of the following markels: Austrila, Austria, Denmark and Norway.

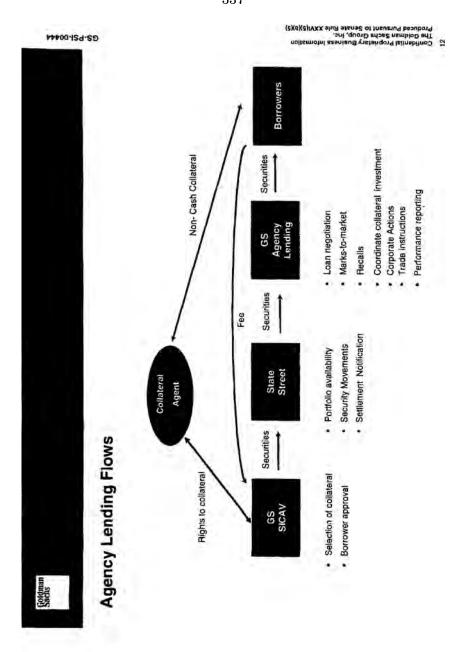
2) US equity lending for the Lux SIGAV began on a phased basic between July and September, 2004. The above table reflects fine actual income aemed in 2004, however the refurn on jendable assets has been annualized to provide a more reasonable comparison to 2005.

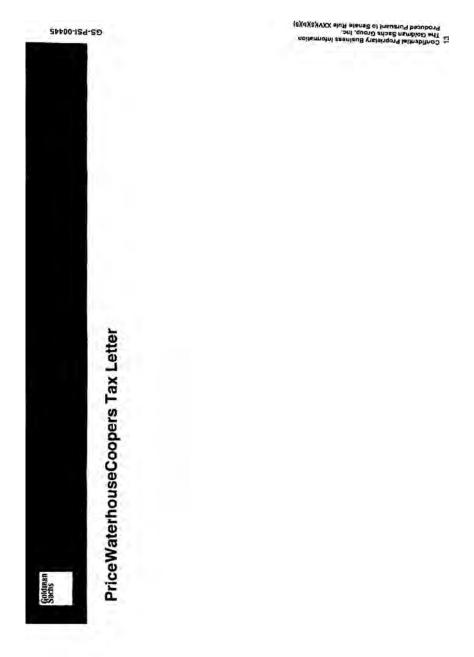
3) "Other Non Lendable Assets" includes preferred stock, markets which are not lent (i.e. UK, Korea, Hong Kong), cash and cash equivalents.

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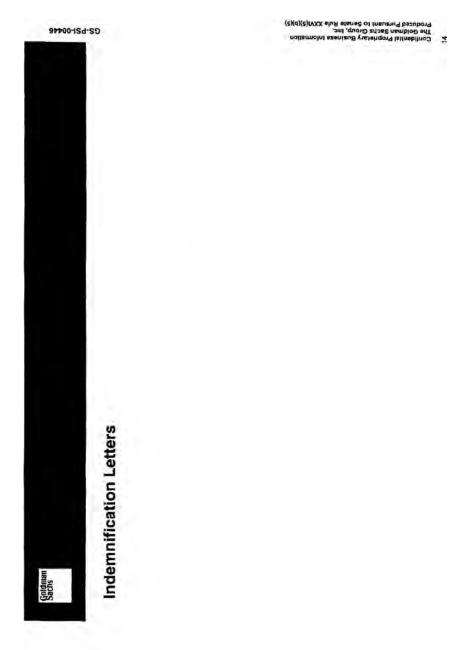




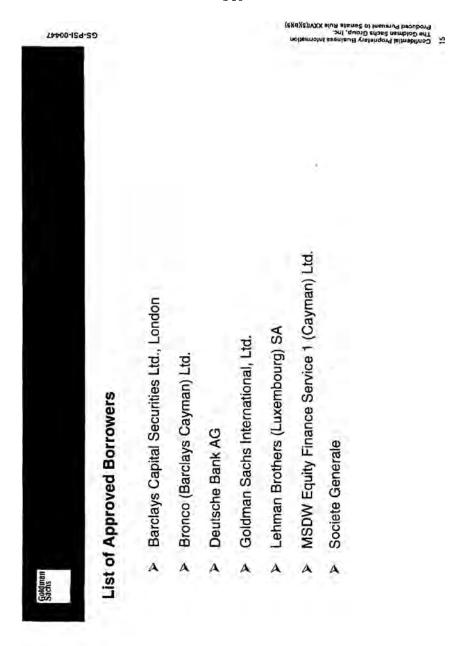








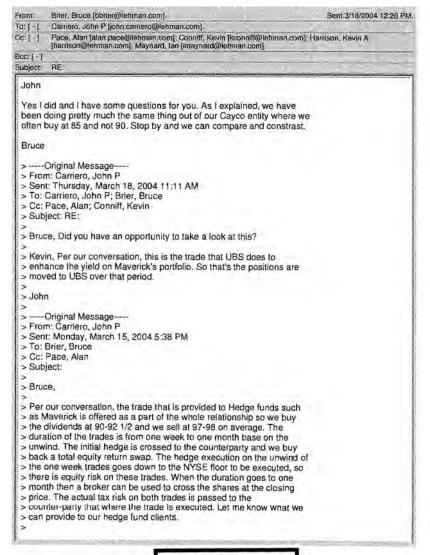




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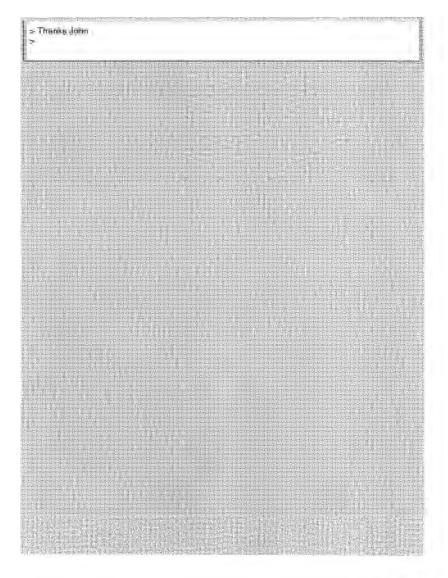
Important Notice

upon this material. The material is based upon information, that we consider reliable, but we do not represent that it is accurate or complete, and it Department . This material is intended for the exclusive use of the person to whom it has been delivered by Goldman Sachs International and is for general guidance purposes only. This material does not constitute an offer to sell or the solicitation of an offer to buy any security or to enter non-public information. The contents of this material should not be construed as investment, financial, strategic, legal, regulatory, accounting or Goldman Sachs' prior written consent. However, we mutually agree that, subject to applicable law, you may disclose any and all aspects of this Goldman Sachs, or persons involved in the preparation or issuance of this material, may from time to time, have long or short positions in, and into any agreement and neither Goldman Sachs International nor any of its affiliates (together "Goldman Sachs") is soliciting any action based non-public information relating to the companies and assets that are referred to in this material, and does not intend to disclose such status or mentioned herein. In addition, Goldman Sachs, by virtue of its status as an advisor, underwriter or otherwise, may possess or have access to information contained herein and you must obtain your own independent investment, tinancial, strategic, legal, regulatory, accounting and tax advice from your professional advisors. This material has been prepared by Goldman Sachs International, which is regulated by the Financial This material has been prepared and issued by the Equities Division of Goldman Sachs International and is not the product of the Research advertisement. No part of this material may be (i) copied, photocopied, or duplicated in any form, by any means or (ii) redistributed without should not be relied upon as such. Consequently, we accept no responsibility or liability for the accuracy or otherwise of such information. Opinions expressed are our current opinions only. This material is not, and under no circumstances is to be construed as a prospectus or buy or sell, the securities, commodities, futures, options, derivatives or other instruments and investments identical with or related to those material that are necessary to support any U.S. federal income tax benefits, without Goldman Sachs imposing any limitation of any kind. tax advice concerning the consequences of engaging in the business or strategies described herein. You should not rely on any of the Services Authority.



Permanent Subcommittee on Investigations
EXHIBIT #40

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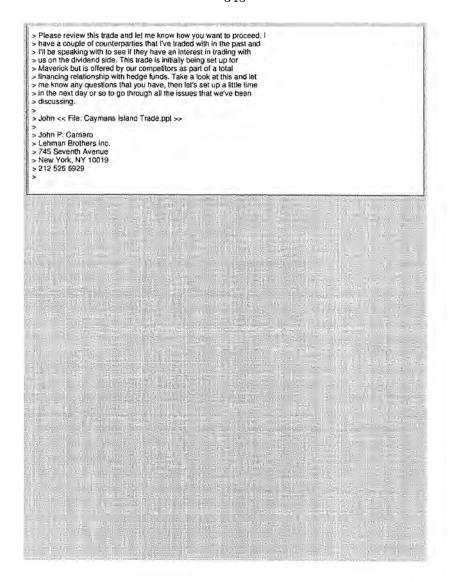
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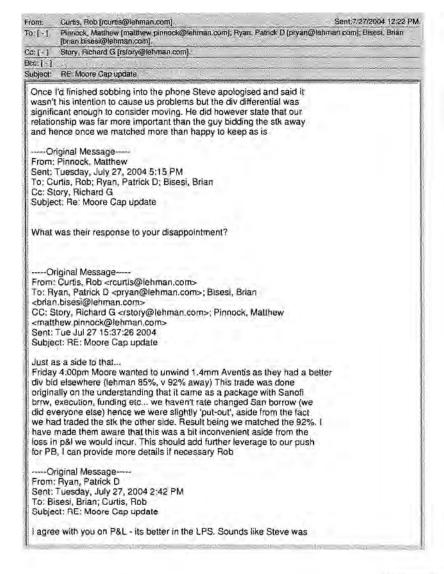
```
From
                      Brier, Bruce [bbrier@lehman.com]
                                                                                                                                                                                        Sent:4/7/2004 4:27 PM
                      Carriero, John P [jcarrier@lehman.com].
To:[-]
                      Pace, Alan (alan pace@lebnian.com), Harrison, Kevin A [harrison@lebnian.com], Maynard, lan [imaynard@lebnian.com].
Cc:[-]
Bcc: [ - ]
Subject:
                   RE: Cayco.
   John
   Our duration standard is longer.
  > ----Original Message-----
> From: Carrièro, John P
> Sent: Wednesday, April 07, 2004 4:24 PM
> To: Brier, Bruce
> Co: Pace, Alan: Harrison, Kevin A; Maynard, Ian
> Subject: RE: Cayco

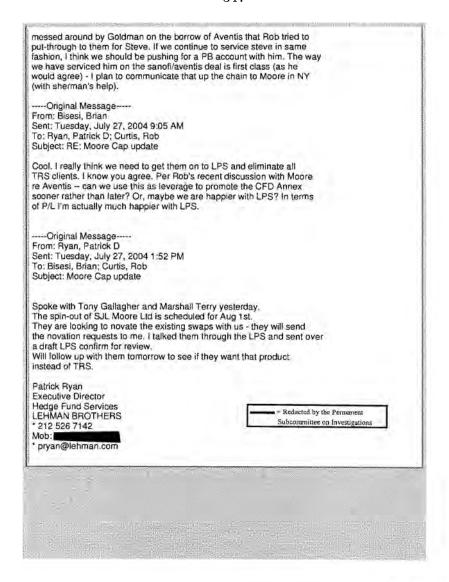
    I will also get some US counterparties, what would be the duration?
    The standard most counter parties use over three days for shares not
    crossed both ways and seven days if crosses both ways.

   > John P. Carriero
> Lehman Brothers inc.
> 745 Seventh Avenue
> New York, NY 10019
> 212 526 6929
   > ----Original Message---->
> From: Brier, Bruce
> Sent: Wednesday, April 07, 2004 3:42 PM
> To: Carriero, John P
> Cc: Pace, Alan; Harrison, Kevin A; Maynard, Ian
> Subject: Cayco
    >
> John
   > Thanks for the diagram. The way we left it the last time we met was 
> that you were going to identify US counterparties that would be willing 
> to pay 97-98% on the swap. I see here you have 100%, I assume the 
> difference is built into the rate?
    > Is this diagram prepared for the US counterparty?
   I would suggest a bit more discretion (ie, less reference to tax
> treaties) and, if this is for the unrelated US buyor, less detail of
> flows prior to the swap/sale.
    > Bruce
   > Bruce.
```

LBHIPS100131396



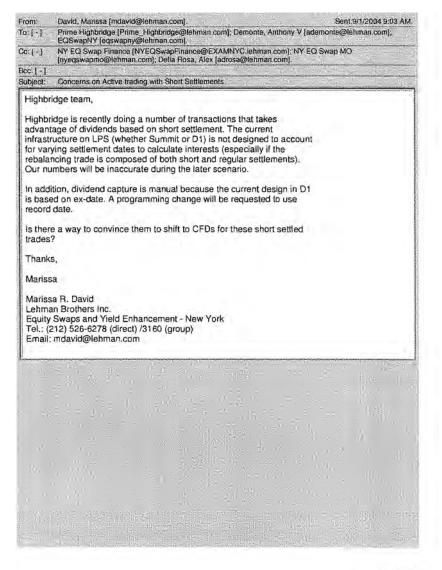


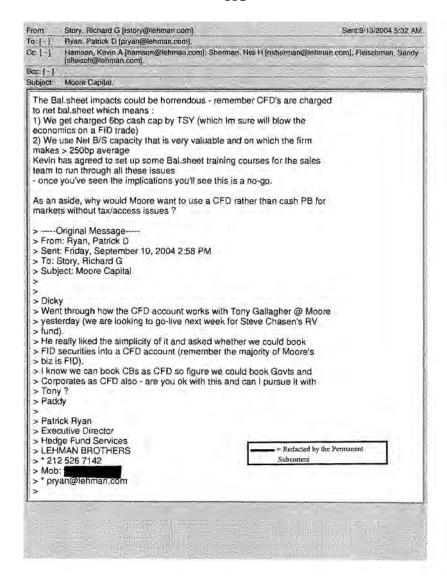


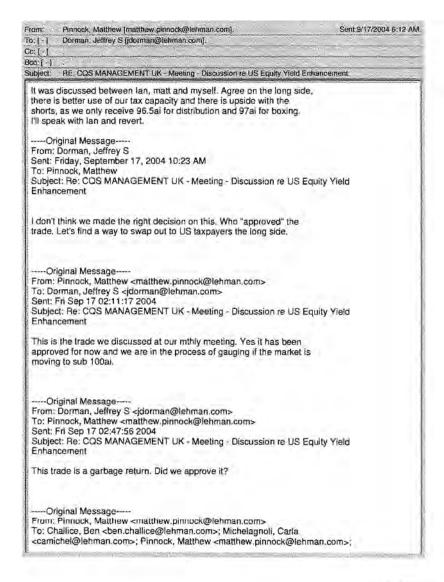
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o: [-] Ryan, Patrick D [pryan@lehman.com]	
0/[-]	
DDI [-] . Ublect: FW: CFM US Business via CFD.	
uujed: FW CFW US Business via CFU.	ner - u - ris arterente vos
Orleinal Magaza	
>Original Message > From: Ryan, Patrick D	
> Sent: Friday, August 22, 2003 6:30 PM	
> To: Harrison, Kevin A; Pace, Alan; Baldassano, Matt; Trommer, Stev	9.
> Cipriano, Paul; Ventura, Salvatore; Brannan, Paul F [London]; Wilso	n
> Victoria; Bryan, Emma; Gillham, Katie; Seto, Karen	
> Cc: Zorek, Jeffrey A; Lowrey, John	
> Subject: CFM US Business via CFD	
> Importance: High	
>	
>	
> Guys	
> For the CFM US business, it has finally been agreed with the client to	
> book both long and short business as CFD.	
> This will mean that the associated shorts will show as LBSF house	
> shorts in DTC 5229 and Kevin has confirmed that his team will be	
> responsible for covering the positions each day from a stock loan > perspective.	
> berspective. > Unusually, we will not be booking any dummy stock loan to the client	'e
> accounts. In keeping with the existing arrangement for europe and	
> japan, the service desk will charge the client the agreed stock loan	
> fee on their daily US short balance.	
>	
> They are planning to cross the existing portfolio on Sept 2nd (1st is	
> US holiday) and begin trading with Lehman that same day.	
>1	
> Outstanding Issues	
> Paul Cip - confirm end of day file format that program trading will	
> send you and confirm that this is compatible with ADAT and can > successfully be booked in RB/ITS	
> Paul Cip - check tax status of manufactured dividends from LBSF ba	ck
> to LBI (via LBIE)	Cit
> Steve T - filter out the suggested daily stock loan trades for	
> client's account in Short Coverage screen	
>	
> Please reply immediately if there are any other issues still to be	
> addressed.	
> Destant	
> Regards	
> Patrick	
	31-1
1000 1000 1000 1000 1000 1000 1000 100	









Bizer, David [LDN] <dbizer@lehman.com>; Harrison, Kevin A ohzer, bavid jebny coorse (minan.coms, Harrison, even A charrison@lehman.coms); Maynard, lan cimaynard@lehman.coms; Rutherford, Mark cmrutherf@lehman.coms; Story, Richard G </br/>
Story@lehman.coms; Brannan, Paul F [London] </br>
Brannan, Paul F [London]
pbrannan@lehman.coms; Baldassano, Matt
Matt.Baldassano@lehman.coms; Curtis, Rob <rcurtis@lehman.com>; Gillham, Katie <kgillham@lehman.com>; Hamilton, Lisa M hamilto@lehman.com; Trommer, Steven [LONDON] STrommer@lehman.com; Bisesi, Brian bisesi@lehman.com; D'Angelo, Claudio <cdangelo@lehman.com>; Fretigne, Gilles <gilles.fretigne@lehman.com>; Froehlich, Thorsten <thorsten.froehlich@lehman.com>; Mammoliti, Luca <lmammoli@lehman.com>; Marchand, Stephane <SMarchan@lehman.com>; Zimmermann, Andrea <azimmerm@lehman.com>; Pittam, Julian <jpittam@lehman.com>; Schilling, Mark <mark.schilling@lehman.com>
Sent: Thu Sep 16 06:44:50 2004 Subject: CQS MANAGEMENT UK - Meeting - Discussion re US Equity Yield

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ACCOUNT : CQS MANAGEMENT UK - M040128

DATE: September 14.2004

SUBJECT : Discussion re US Equity Yield Enhancement

LEHMAN PARTICIPANTS:

Matthew Pinnock

CLIENT PARTICIPANTS: Matt Coleman - Treasury Manager

OVERVIEW:

We entertained CQS for the evening and the following was discussed:
- CQS have shown us \$250mm of US equity longs (pref shs) and \$170mm equity shorts (ords) to be placed on CFD with LB. These were previously held away, where CQS received 100% of the dividend on the longs and paid 100% on the shorts. Recently, the CQS PB commenced paying 70% of the dividend on the longs. (We believe this may be Deutsche)

- MC is happy to move the positions to LB on CFD, provided we can pay 100% on the longs.

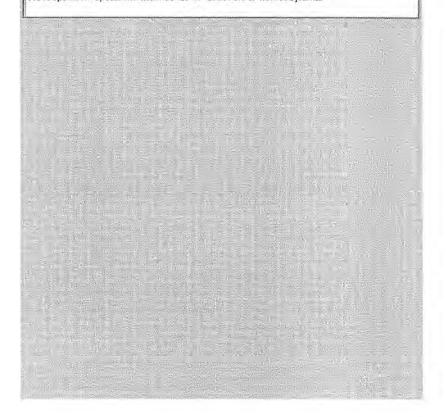
FOLLOW-UP :

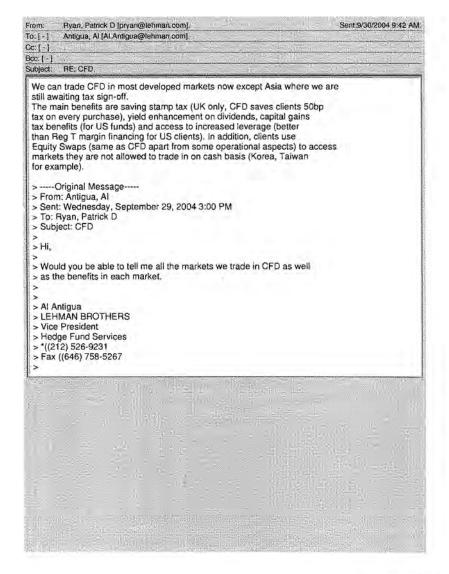
 transfer balance from CQS PB
 understand if other PBs are looking to move levels in market away from 100% or is this just an isolated incident with CQS. If the market is

moving, look at balances on book where we pay 100% and, either re-rate or leverage benefit into other things.

OUTCOME:

- agreed with Maynard/Baldassano to bring on balance, even though account is consolidated. Once above analysis is complete, we will review broader audience.
- Click here to view/edit journal





om: Trommer, Steven [LONDON] [STrommer@lehman.com]. Sent.10/18/2004 7:47 AN
 [1] Okay, Bevin J [bokay@lehman.com]; Curtis, Rob [rourtis@lehman.com]; Boraczek, Bob [bob.boraczek@lehman.com]; Ryan, Patrick D [pryan@lehman.com]; Morris, David [dmorris@lehman.com].
07 [-]
blect! HE: Citadel & US Divs.
Fhx I'll pass this along
Original Message
From: Okay, Bevin J
Sent: Monday, October 18, 2004 12:46 PM Fo: Trommer, Steven [LONDON]; Curtis, Rob; Boraczek, Bob; Ryan, Patrick
)
Subject: Re: Citadel & US Divs
214 bis to book to a secretary appropriate and adopt at 1,000 00 which is
Cfd biz is book to a separate account and priced at +30/-30 which is note than PB.
and the same of th
Original Message
From: Trommer, Steven [LONDON] <strommer@lehman.com></strommer@lehman.com>
To: Curtis, Rob <rcurtis@lehman.com>; Okay, Bevin J <bokay@lehman.com>; Boraczek, Bob <bob.boraczek@lehman.com>; Ryan, Patrick D</bob.boraczek@lehman.com></bokay@lehman.com></rcurtis@lehman.com>
<pre>cpryan@lehman.com></pre>
Sent: Mon Oct 18 03:29:05 2004
Subject: RE: Citadel & US Divs
an Maynard wants to know what the financing terms are for the Rouse
CFD I would have said it defaults to the PB financing however I do not see this position booked in any of their PB accounts anyone know
where it is and what the terms are?
Odeler Messes
Original Message From: Okay, Bevin J
Sent: Wednesday, October 13, 2004 10:37 AM
To: Boraczek, Bob; Ryan, Patrick D
Cc: Moriis, David Subject: RE: Citadel & US Divs
Rouse is being bought by General Growth Properties for 67.5 a share,
expected close 12/31. This should stay on until closing or a deal event
(a few months).We agreed with Citadel that this product was not to be used for short term ex-date trading. Not sure why they have their own
CFD book but it could be because they execute directly into CFD (DMA)
which may help in reconciliations with Raptor.
Let me know if you need more info.
Thanks
Let me know if you need more info.

----Original Message-----From: Boraczek, Bob Sent: Wednesday, October 13, 2004 10:05 AM
To: Ryan, Patrick D; Okay, Bevin J
Cc: Morris, David
Subject: RE: Citadel & US Divs Bev/Paddy - what did you agree with Citadel ? ----Original Message-----From: Curtis, Rob Sent: Wednesday, October 13, 2004 9:55 AM To: Boraczek, Bob; Morris, David Subject: Citadel & US Divs Guys, what do we pay Citadel on US longs please over div? lan M is very concerned that the recent CFD they wrote with us in RSE US is a pure div strip using our tax capacity. Also, why do they have their own CFD book (CDL) ? thx Robert Curtis Prime Broker Sales / Trading +44 20 7103 3030

rom:	Story, Richard G [rstory@lehman.com]. Ryan, Patrick D [pryan@lehman.com].	Sent:11/3/2004 6:28 AM
c:[-]	Sherman, Neil H [Insherman@lehman.com]; Pace, Alan [alan pace@lehman.com]; Dirian bisesi@lehman.com].	n]; Bisesi, Brian
cc:[-]	(Carinos and Carinos and Carin	
ubject	Highbridge Utilities Fund - ROA and PL analysis.	
in PB : One si enhan The 30	analysis - this is exactly type of analysis/metrics we should apply Sales going forward. mall request - pis could you add Tax capacity details (ie- are we cing US divs, if so how much is 19% enh. number that needs to be alloc to Highbridge .vs. the total eady use).	
Have y ? Rich	ou already had feedback/approval on this biz whilst I was on hols	
From: Sent: To: St A; Pac	iginal Message Ryan, Patrick D Tuesday, October 26, 2004 10:45 PM ory, Richard G; Dorman, Jeffrey S; Maynard, Ian; Harrison, Kevin ie, Alan; Baldassano, Matt tt: RE: Highbridge Utilities Fund - Yield Enhancement	
	uested, pls see attachment for ROA and B/S usage (I have used g pricing for this exercise).	
	nancing ROA on the new strategy is 25bp compared to 75bp on their g PB account.	
busine of esti	visional ROA on the new strategy is 100bp vs 139bp on existing iss. I am assuming we get \$1.5mm in comms on the new strategy ou mated pool of \$6mmwe are in advanced talks with them on moving stronic execution which should secure the \$1.5mm at a minimum.	
	t, the impact on the overall economics of Highbridge is minimal - visional ROA falls just 4bp from 139bp to 134bp.	
Pls ad	vise on how to respond to client.	
Thx Paddy		
From:	iginal Message Story, Richard G Fhursday, October 21, 2004 3:16 AM	

To: Dorman, Jeffrey S; Ryan, Patrick D; Maynard, Ian; Harrison, Kevin A; Pace, Alan; Baldassano, Matt; Sherman, Neil H; Bisesi, Brian Cc: Ventura , Salvatore; Brannan, Paul F [London] Subject: Highbridge Utilities Fund - Yield Enhancement

In addition to Jeff's comments, I would add that for every piece of new biz going forward we Need to calc the Bal.sheet utilisation (Net and gross) + ROA + \$ 'Tax capacity' used.

Pls include these metrics on the client approval forms and Sai pls also include this Data as standard on the transition pipeline sheet.

Thx Richard

----Original Message----From: Dorman, Jeffrey S

Sent: Thursday, October 21, 2004 1:24 AM

To: Ryan, Patrick D; Story, Richard G; Maynard, Ian; Harrison, Kevin A;

Pace, Alan, Baldassano, Matt

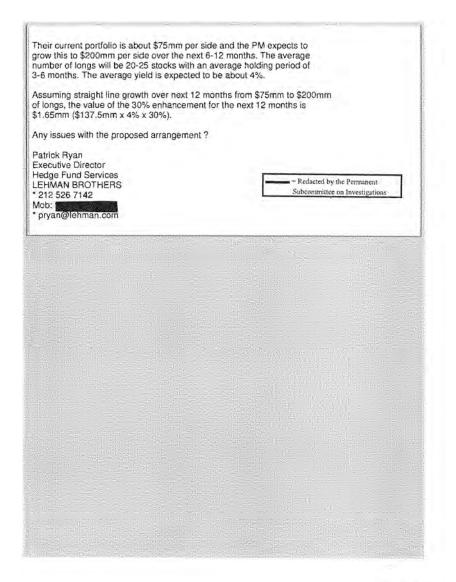
Subject: Re: Highbridge Utilities Fund - Yield Enhancement

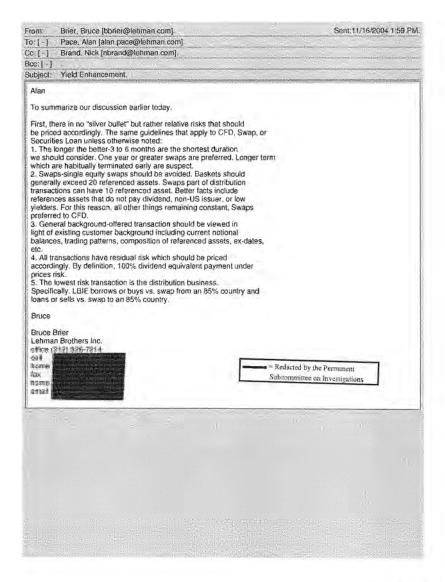
Please coordinate pricing (etc) with Matt B and Kevin H. I would like to see us move away from the last CQS style pricing decision. What percent of comms can we expect?

Jeffrey

To: Dorman, Jeffrey S jorman@lehman.com; Story, Richard G <a href="mailto:story@lehman.com; Maynard, lan jorman.com; Harrison, Kevin A harrison@lehman.com; Pace, Alan jorman.com; Pace, Alan jorman.com< Subject: Highbridge Utilities Fund - Yield Enhancement

The new Utilities strategy is up and running at Highbridge (see account of the Notifies strategy is up and running at Highbridge (see account 5600193) and we need to complete the discussions we have been having with Potapchuk and the PM on yield enhancement. Our proposal to them was to move EVERY long into CFD regardless of record date or whether the stock pays or not (i.e. no cherry picking, no crossing in before record date etc). Shorts would stay as physical. For unwinds on longs, they would need to unwind the CFD first in order to avoid any short sale rules.





```
Carriero, John P [John.carriero@lehman.com].
                                                                                                        Sent:12/14/2004 3:10 PM.
From:
            Meys, Michael [mmeys@lehman.com]; Knshnan, Anand [Anand.Krishnan@lehman.com]
To: [ - ]
Cc:[-]
Bcc: [.-]
Subject: RE:LTD SSF.
  We show them 100% on CFD with a basket of 10 positions, no more than 30%
  in any one position and a 60 day financing. As far as the SSF trading
 goes there are firms that currently offer ex minus one day then trade them out on ex. So to show them an uncompetitive price on a single stock future for a long duration is not advantageous to us or the client. The ABCs of cross border derivatives that I sent around earlier give a
  pretty good explanation of taxation and the associated risks on
  transactions. If you didn't receive a copy let me know.
  John P. Carriero
  Lehman Brothers Inc.
  745 Seventh Avenue
  New York, NY 10019
  212 526 6929
 > -----Original Message--
> From: Meys, Michael
  > Sent: Tuesday, December 14, 2004 2:49 PM
  > To: Krishnan, Anand, Carriero, John P
> Subject: RE: LTD SSF
  > John.
 > Were is the counterparty domiciled. This is clearly a yield > enhancement trade and having this information is vital to correctly
  > pricing the risk.
  > Mike
  > ----Original Message----
> From: Krishnan, Anand
  > Sent: Tuesday, December 14, 2004 2:39 PM
> To: Carriero, John P
  > Cc: Meys, Michael
> Subject: RE: LTD SSF
  > If it is an off shore we can not provide 100 % on the dividends. I am
  > not sure how are they are getting 100 % div on the swap. I can price
  > this with 75 % div, if they need a pricing on this.
  > ----Original Message---
> From: Carriero, John P
  > Sent: Tuesday, December 14, 2004 2:37 PM
  > To: Krishnan, Anand
> Subject: RE: LTD SSF
```

```
> They do swaps on them so they are getting 100% from other
> counterparties, I asked us to show them a price on the SSF.
> John P. Carriero
> Lehman Brothers Inc.
> 745 Seventh Avenue
> New York, NY 10019
> 212 526 6929
> ----Original Message----
> From: Krishnan, Anand
> Sent: Tuesday, December 14, 2004 2:18 PM
> To: Carriero, John P
> Subject: RE: LTD SSF
> Thanks. What kind of tax withholding currently they are in. Thanks
> ----Original Message----
> From: Carriero, John P
> Sent: Tuesday, December 14, 2004 2:17 PM
> To: Krishnan, Anand
> Subject: RE: LTD SSF
> The counterparty is UBS O' Connor and they are offshore.
> John P. Carriero
> Lehman Brothers Inc.
> 745 Seventh Avenue
> New York, NY 10019
> 212 526 6929
> ----Original Message----
> From: Krishnan, Anand
> Sent: Tuesday, December 14, 2004 1:59 PM
> To: Carriero, John P
> Cc: Meys, Michael
> Subject: LTD SSF
>
> Hi John
> What is tax bracket. Does this client have a prime account in Lehman.
> Thanks
```

rom:	Brannan, Paul F [London] [porannan@lehman.com].	Sent 12/24/2004 6:30 A
0:[-[Bisesi, Brian [brian bisesi@lehman.com]; O'Mara, Sean G [sean dinara@lehman.com]	
c:[-]	Lucas, Vincent [vlucas@lehman.com]; D'Amico, Tom [Tom Damico@lehman.com].	m]; Freeman , Jill
Bcs: [- [
ubject:	RE: Moore Capital Lehman follow up materials	
Sean,		-iranin mirasi
Paddy	me your guys set the accounts up. Can you please coordinate with and get changed, You are going to have to touch base with Moore US prior to making any changes.	
Paul		
	iginal Message	
	Bisesi, Brian Friday, December 24, 2004 11:27 AM	
	Mara, Sean G; Ryan, Patrick D	
	cas, Vincent; Brannan, Paul F [London]; D'Amico, Tom; Freeman	
Jill		
Subject	tt: FW: Moore Capital Lehman follow up materials	
netting "comb	 I found the pricing. See below. As you can see, we only offer in cash PB. For CFD's — I dressed it up a bit and sold it as ined" financing. In other words — our standard CFD product. We o change. Thx, bb 	
	iginal Message Bisesi, Brian	
	Thursday, May 20, 2004 5:29 PM	
To: 'to	ny.gallagher@moorecap.com	
Cc: 'st	eve.chasan@moorecap.com'; Pace, Alan; Sherman, Neil H ct: FW: Moore Capital Lehman follow up materials	
Tony,	S. C.	
detail :	good to touch base with you. I look fwd to speaking with you in around the differentiators of our Synthetic PB product, Let me some times that work for you next week and I will coordinate call by end.	
To sur are:	nmarise, the major benefits that our Synthetic PB product provides	
a marg perspe	tal Efficiency = Cost Savings Lehman's Synthetic PB st (CFD's) operate exactly like a cash prime brokerage account from gining, reporting, servicing, financing, and securities lending active. For example, free cash, margin, and short sale proceeds treated the same and can be used to pay down debit balances	

- (i.e. fund long positions).
 * Financing is charged at the account level across all synthetic positions not on notional longs and notional shorts (like in a traditional swap transaction). Since free cash, margin and short sale proceeds are all within the same account and are used against debit balances, the economic savings is significant.
- * Accounting treatment like cash equities i.e. no equity resets. P/L is realised upon sale.
- * Margin call effected only if "net equity" in the account is less than the daily margin requirement.
- * Automated yield enhancement in some markets and potential to further enhance yield through proactive coverage on a case by case
- Provides significant transaction savings.
 Synthetic P8 product is totally integrated with our DMA systems. We have a complete STP system from point of trade through to reporting. All fills are automatically financed (both long and short) into your Synthetic PB account without anyone touching the trade/booking a stock loan transaction.
- * Traded under ISDA and CFD annex. Reduces operational hassle no long trade confirms, resets.

Below, is the copy of the email that I sent to Steve. One thing that I mentioned to Steve was that we would spend as much time as necessary to help you with any operational or IT customisation that may be required. Likewise, on the documentation side of things we will prioritise to the top of our workload and minimise any legal back and forth - i.e. we will lead with a very clean doc and make sure that the biz side tracks all comments to promote a more efficient negotiation.

Thank you for your time and consideration.

Regards,

Brian Bisesi Head of European PB Sales

-- Original Message-From: Bisesi, Brian

Sent: Monday, May 10, 2004 1:50 PM

To: Chasan, Steve

Cc: Sherman, Neil H; Story, Richard G; Pace, Alan; Ryan, Patrick D Subject: Moore Capital -- Lehman follow up materials

Steve,

It was good to chat with you on Thursday of last week and earlier today. I have provided you with some information on each of the points we discussed. If there is anything missing from this mail pls let me know and I'll get it to you asap. I have connected with my US colleagues regarding your visit and it looks like Monday or Tuesday would work well

for us. Pls indicate your preference. I will work with the Team to create an Agenda to cover all the aspects of our product. Can you pls let me know who would attend the meeting in New York and pls indicate their functional responsibilities so I can coordinate appropriately.

Financing Levels

Prime Brokerage, and Option 2 is for Synthetic Prime Brokerage. Option 2 is priced slightly wider b/c of the balance sheet usage as well as the yield enhancement, tax and transaction savings benefits that come with synthetics. Furthermore, our Cash PB proposal includes full netting/consolidation of financing within currencies. Our synthetic PB proposal offers you combined financing -- in other words, the ability to use free cash and margin to pay down debit balances. As we don't promote the paying down of debit balances for obvious reasons, we find this to be a good compromise to full Net financing. For example, we receive better balance sheet treatment and the fund receives more aggressive financing and stock loan levels.

<< File: Moore Cap Fee Schedule.pdf >> Standard CFD Annex

We will only need to execute the below Annex in conjunction with the existing ISDA(s) that you have in place with us.

<< File: CFD Annex draft 30.04.041.doc >>

Corporate Actions

The primary source of our corporate actions data is Fidelity. We maintain a Service Level Agreement that guarantees 98% accuracy on all announced corporate actions. In addition Lehman Brothers has a dedicated team of people that manage corporate actions including scrubbing the data and running it through other sources (e.g. Bloomberg and Reuters). As part of our PB service, you also receive automated emails informing you of an upcoming event on your Lehman PB portfolio as well as reminder emails and phone calls as the election deadline approaches.

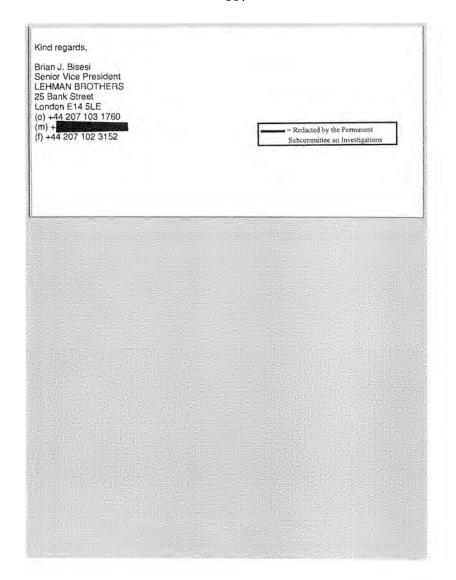
In terms of your question around corporate actions on synthetics -- most of the time we are always on the same side of a corp action trade. We haven't had an issue in the past where we couldn't vote the way the client wanted. In the unlikely case that we were not able to vote per the client request, we would isolate/segregate the position to get the client to where they need to be. << File; corp actions.pdl >>

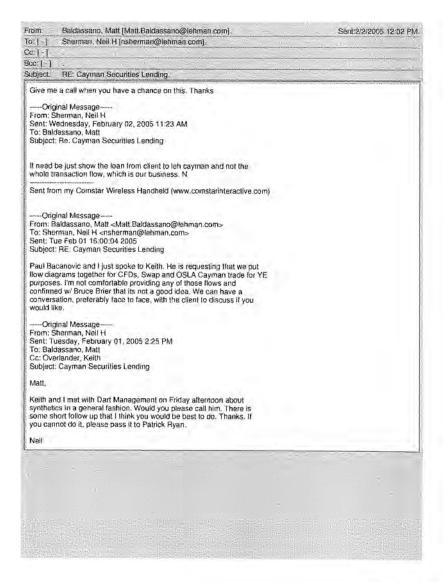
Product Presentations

<< File: CFDs.ppt >>

<< File: New Pitchbook.pdf >>

I can also confirm that we are able to do cross currency financing trades on all CFD's. Thank you for your consideration of Lehman Brothers. Please let me know if we have missed anything. In the meantime, I will coordinate with my NY colleagues.





iom:	Meys, Michael [mmeys@lehman.com].	Sent:2/8/2005 8:44 AM
0:[-]	Caplan, Andrew [London] [acaplan@lehman.com]; Regazzi, Th Anand [Anand.Krishnan@lehman.com]; Levi, Saar [saar levi@l [phadingh@lehman.com].	iomas [tregazzi@lehman.com]; Krishnan, lehman.com]; Hadingham, Peter
c:[-]		
ec:[-]		
ubject:	CFD Business.	
Andrev	v,	
utilizing	re immediately, we will no longer be able to transact tr g the CFD product. Can you please inform your clients swap will be a viable replacement product.	ades , LPS or
Thanks	5,	
Mike		

o:[-]	to consider the contract of the contract of the contract of the contract of	peter.barenthein@lehm. orek1@lehman.com].	annomy.		Sent:4/20/2005 5	. TO FIVE
c:[-]	and display in the continues of the property o	krishna@lehman.com].				-
00:1-1	ransman, rantow to	and the second				
biect:	Tykhe Divs Paid -	Monthly.xls.				
			ATTIVITY OF THE PARTY OF THE PA			
Jeff,						
Loone	lensed the analys	is as much as possib	ole to get to th	e point For		
		nal until March. In th				
		rtfolio was in the mid				
		big deal, but the the				
		ld ticks up significan				
		tax arb, and there is ecials within the LPS				
		ly seems they took a				
		s down to this for Th				
		d Funds (we lose or				
		arb, and specials.	Tarolago 11.0	DPS //Silor	Suri	
onp.a.	,,	are, and openials.				
Best	regards,					
Peter	22.4					
AAAAAAAAAAA					de de la companya de	

```
Baldassano, Matt [Matt.Baldassano@lehman.com].
                                                                                                         Sent:4/22/2005 6:55 AM.
From:
            Story, Richard G [rstory@lehman.com]; Ryan, Patrick D [pryan@lehman.com]; Sherman, Neil H
To: [-]
            [nsherman@lehman.com].
Ce:[-]
            RE: Synthetics Re-engineering.
Subject:
  Rich,
  Just 2 comments:
  - For SSS - if clients are going to execute 1 way only we should require
 it be on way out otherwise it will be difficult and most likely
unmanageable to track who has crossed in and who has executed in.
- Would like to get a clear definition, and perhaps challenge what we
  have been told so far, of what constitutes a "US Client".
  Thanks
  Matt
 > ----Original Message---
> From: Story, Richard G
 > Sent: Thursday, April 21, 2005 4:07 AM
> To: Ryan, Patrick D; Sherman, Nell H; Baldassano, Matt
  > Subject: Synthetics Re-engineering
  > Paddy, Neil, Matt
  > Pls review attached update of specific client details/positions
  > attached - can you confirm the action steps live listed + Sales owner
 > are correct ?
  > Thx Rich
 > - US + INTL clients doing hi-volume synthetic trading > 25posns
>----> MUST use LPS + MUST execute both sides with LEH
> - US clients wanting to do low-volume synthetic trading ----->
 > MUST use SSS single-slock-swap + MUST execute at least 1-side with LEH
  > - INTL clients trading INTL stocks are the only ones allowed to use
 > CFD going fwd
  > - Old trades which don't conform to this framework will be allowed to
 > unwind naturally (ie- no forced closure)
> - Client specific action steps laid out below
 > Client Specifics :
 > 1) US swaps (LPS) with US clients :
> Clients - Tykhe stat $1.5bn, Highbridge CB $1.0bn, Tudor quant
  > $0.25bn, 4-5 other stat/quant clients $0.3bn
```

```
> Street execution protocol - LEH, DB, CSFB, BOA, Bear, MS, GS all
> require min. 1-side execution (UBS only firm that doesnt per
> Highbridge ?)
> Summary action step -
> A) stat clients - execute both legs via LPS with LEH - NO ACTION
> B) Highbridge - exec 1-leg today in CB's, TBD whether Baldassano 
> proposes SSS or LPS 'Point to liquidity' (o/s with Legal)
> 2) US CFDs with US clients :
> - clients - AG $0.6bn, JMG $0.7bn, PHZ $0.2bn, UCSG $10m

> << File: US CFDs ' US clients' Apr1 2005 .xls >>

- LEH CFD product is diff. to street, so no street protocol
> Summary action step -
> PHZ move to LPS (Okay), JMG allow to close due to low ROA (Rossano),
> UCSG already moved to SSS (Ryan), AG - TBD (Pace)
> 3) US swaps with Intl clients :
> 4) US CFDs with Intl clients :
> - LMV CFDs total $0.8bn
>- LEH clients CFM $230m, CQS $600m
> Summary action step -
> CFM - Lowrey switching to cash PB ($500k div.loss) or LPS (can CFM > handle ops?), CQS - Pinnock discussing unwind of US book
> 5) Intl swaps (LPS) with US clients :
> - LMV swaps total $1,25bn
> Clients - Evnine $200m, Highbridge $500m, Millenium $200m, RQSI $40m,
> Tykhe $200m, SAC $100m
> Street protocol - LEH + other firms cross both legs for Intl stock
> (ie-don't need execution leg)
> Summary action step -
> All clients are stat who execute LPS and 2 legs with LEH, therefore NO
> ISSUE
> 6) Intl CFDs with US clients:
> - Total LMV CFDs $1.2bn
> << File: Intl CFDs ' US clients' Apr1 2005 :xls >>
> Clients - AG $10m, Highbridge $100m, Fortress $5m, Gruss $70m,
> Libertyview $10m, Mellon HBV $30m, Millenium $250m, Moore $100m, Perry
> Stark $30m, O'Connor $270m, GSAM $250m, UCSG $15m

    Summary action step -
    GSAM switched by Bisesi to LPS, other 10 clients awaiting legal
```

```
> approval re. LPS 'UK point to liquidity' product (as per GSAM / UK mkt
> protocol)
> 7) Intl swaps with Intl clients :
> $0.4bn total LMV - No issues here since offshore
> 8) Intl CFDs with Intl clients :
> $4.7bn total LMV - No issues here since offshore
```

From:	Bisesi, Brian (brian bisesi@lehman.com). Sent.6/8/2005/3.05 Al.
To: [- [Pinnock, Matthew [matthew.pinnock@lefiman.com]; Story, Richard G [rstory@lefiman.com]; Lowrey, John [JLowrey@lefiman.com]; Morar, Emad [emorra@lefiman.com]; Sherman, Naii H [nsherman@lehman.com]; Wecker, Jeff [jwecker@lefiman.com]; Fernandez, Jeff [jwecker@lefiman.com]; Grandez, Jeff [jwecker@lefiman.com]; Grandez, Jeff [jwecker@lefiman.com]; Grandez, Jeff [jwecker@lefiman.com]; Maynard, Jan [jimaynard@lefiman.com]; Maynard, Jan [jimaynard@lefima
	Fleischman, Sandy [sfleisch@lehman.com].
x:1-1	Lucas, Vincent (viucas@lehman.com); Wannenmacher, Tim [lim.wannemacher@lehman.com].
lec; [-]	
ubject.	Re: Dividend Rates re LPS Clients
	change all - both active and non active. There is nothing that the client has that would make them expect 85% across the board.
Sent fro	om my BlackBerry Wireless Handheld
From: i To: Sto sbrian. Emad - Wecke <jeff.fe </jeff.fe <imayre </imayre CC: Lu <tim.wa </tim.wa Sent: V Subjec 	ginal Message Pinnock, Matthew <matthew.pinnock@lehman.com> ry, Richard G <rstory@lehman.com>; Bisesi, Brian bisesi@lehman.com>; Lowrey, John <jlowrey@lehman.com>; Morrar, cemorrar@lehman.com>; Sherman, Neil H <nsherman@lehman.com>; r, Jeff <jwecker@lehman.com>; Fernandez, Jeff rnandez@lehman.com>; Curtis, Rob <rcurtis@lehman.com>; Maynard, lan lard@lehman.com>; Fleischman, Sandy <sfleisch@lehman.com> cas, Vincent <vlucas@lehman.com>; Wannenmacher, Tim annemacher@lehman.com> ved Jun 08 07:50:29 2005 t: Dividend Rates re LPS Clients int analysis uncovered we apply a blanket divided rate to all LPS clients, ess of underlying tax rate. In some markets, we are actually losing money rne a dividend is paid. 85% was historically applied as LPS could only reflect idend rate across the board, however, this has subsequently been changed</vlucas@lehman.com></sfleisch@lehman.com></rcurtis@lehman.com></jwecker@lehman.com></nsherman@lehman.com></jlowrey@lehman.com></rstory@lehman.com></matthew.pinnock@lehman.com>
For all potentia there a reflecte	Itiple dividend rates can now be applied. new clients, we should either reflect actual dividend rate or be aware of the all loss. For existing clients, we have the ability to change these, providing re no objections. The following accounts are those who currently have 85% of in the system, who we should look to change. This includes both inactive live baskets:
Evnine	Worldwide curope y apital

Buhl Personal Inv ADI Kallista Pioneer Gran Mandrake Manuake Cheyne Pentagon Special Purpose Amajaro Sentinel Tudor BVI Tudor Prop Rivoli Equity Fd Axa Vectris II Inactive Baskets Millenium Pentagon Moore Credit Fd Lazard Freres - Cobalt Lazard Freres Gestion - Phosphore Armajaro Centaurus Centaurus Citi Centaurus Green Way Sentinel Sabre Style Arbitrage Fund Ltd Sabre Style Long/Short Fund Ltd Sabre MSS Sabre Lyxor Elliott Intl LP Elliatt Intl LP (Liverpool LP) AOR - Global Asset Alloc Mac 25 AOR - Global Asset Alloc Mac 25 AOR - Global Asset Alloc Mac 25 AOR - Global Asset Alloc Master LP AQR - Absolute Return AQR - Global Fixed Income Systeia Stat Arb Fund Systeia Multi Strat Fd MLIM - UK Absolute Alpha Fd Safra Mecsa Please advise thoughts and comments regarding changing the underlying dividend rates for the above clients. Thanks and regards Matt.

rom:	Hurley, Janet T [janet.hurley@lehman.com].	Sent:12/6/2005 9:13 A
0.[-]	Maynard, lan [imaynard@lehman.com]; Bisesi, Brian [brian bisesi@lehman.com]; Le [christine.lee@lehman.com]; Schilling, Mark [mark.schilling@lehman.com].	e, Christine
c:[-]	Curtis, Rob [rcurtis@lehman.com]; EQSWAPLN - MIDDLE OFFICE [EQSwapLN@le Bruce [librier@lehman.com]; Regazzi, Thomas [tregazzi@lehman.com].	ehman.com]; Brier
cc: [-]		
ubject:	RE: withholding	
go into neutra are ne swaps and fo	Brian and I agreed with the client is that trades executed with us pLPS. The client manages its LPS balances to keep them market I. Trades executed away are put into cash PB. To the extent they tong in their cash PB account, they can execute single stocks where we cross from their cash PB account into single stock swap libor our guidelines with respect to the 14 day static holding and unwinding at VWAP.	
I did no 100 fo for year	ot agree any dividend rates, but what is in the system for LPS is r US longs and shorts. I understand we have been paying this rate ars. We have not yet executed any single stock swaps so there is cedent on dividend level.	
we the I plan we sw	otaling up the gross long dividends in Tudor BVI's LPS. I suggest on look at what paying 85 would save. Once we have that, Brian and to call Chip Leveroni and discuss what business we might lose if itched them to 85. If the loss of other business outweighs the it, I think we would agree we should stay at 100.	
synthe comm this is I am h where	lief is that the market pays 100 on long US dividends in all tic products; however, in return we should receive additional ission paying market share from the client. A different way to say to ask, what is Tudor giving us for the 100% they are getting? aving someone pull together a list of clients and trades to see we have paid less than 100 on synthetic longs so that we can the where the market is on this issue.	
synthe positio statem correct	point that is important to keep in mind is that with respect to tics, whether LPS or single stock swap, Tudor has only an OTC in and has no say in how we choose to hedge that position. His nent that we get 100 and therefore should pay 100 should be gently ted; it is enough for him to know that we have agreed to pay him in the synthetic and why we agree to that is not his concern.	
Please	elet me know your reaction.	
Fram: Sent: 1 To: Bis Cc: Cu	iginal Message Maynard, lan Fuesday, December 06, 2005 7:13 AM sesi, Brian; Lee, Christine; Schilling, Mark; Hurley, Janet T rris, Rob; EQSWAPLN - MIDDLE OFFICE st: RE: withholding	

Janet,

Were any DVD rates agreed specifically with Tudor for both onshore and offshore funds?

Rgds ----Original Message-

From: Bisesi, Brian

Sent: Tuesday, December 06, 2005 11:21 AM To: Maynard, Ian; Lee, Christine; Schilling, Mark Cc: Curtis, Rob; EQSWAPLN - MIDDLE OFFICE Subject: RE: withholding

we were silent on divs as part of Event Deal as the funds were pre-existing arrangements for other parts of Tudor's biz. Tudor have two funds -- 1) Tudor Prop Trading (a US company) that would obviously get 100%, and 2) Tudor BVI, the offshore version. Remember that they split into Cash PB and LPS depending on composition of port (i.e. they run a market neutral port in PB and then cross the long tails into single stock swap) so you will have a mix of rates. All done with biz is executed directly into LPS. Janet knows all detail as this was the crux of the synthetic/crossing issue that we have addressed with them. Let me know if I can help more. thx, B

-Original Message-From: Maynard, lan

Sent: Tuesday, December 06, 2005 11:05 AM To: Lee, Christine, Schilling, Mark, Bisesi, Brian Cc: Curtis, Rob; EQSWAPLN - MIDDLE OFFICE

Subject: RE: withholding

Brian...please confirm what has been agreed with the client...I assume 85%?

----Original Message----From: Lee, Christine Sent: Tuesday, December 06, 2005 10:59 AM

To: Schilling, Mark; Maynard, Ian Cc: Curtis, Rob; EQSWAPLN - MIDDLE OFFICE

Subject: RE: withholding

Hi Mark/lan - for single stock swaps, Tudor believes they should be receiving 100% gross for their long posns in US securities. But a lot of our tickets are written as 85% gross....can you please confirm what has been agreed?

Thanksl

-----Original Message-----

From: Guthrie, John E

Sent: Monday, December 05, 2005 7:38 PM

To: Joshua Langsam Cc: Thaver Swallen Subject: RE: withholding

Hey guys, sorry been off the desk most of the day.

For BVI, you would receive 100% of the gross in both BVI and TPT.

----Original Message----

From: Joshua Langsam [mailto:Joshua.Langsam@tudor.com]

Sent: Monday, December 05, 2005 8:00 AM To: Joshua Langsam; Guthrie, John E Cc: Thayer Swallen Subject: RE: withholding

John, can you follow up w/ dividend group this morning so we can get a final answer concerning our tax liability for BVI for AT&T dividend. Looking for explanation if in fact we do not receive 100% as well as exact % we receive (believe we previously thought we receive 85%). As usual, thanks for your help.

---Original Message---From: Joshua Langsam

Sent: Friday, December 02, 2005 7:25 AM To: 'Guthrie, John E'; Joshua Langsam Cc: Thayer Swallen

Subject: RE: withholding Importance: High

John, my trader is looking for a more detailed explanation on this issue. If we held this position on swap w/ Lehrnan why do we not receive Lehman's tax treatment on the dividend (ie 100% for the entire position). Though there is a 15% withholding tax on offshore entities. the position is held on swap, Lehman is receiving 100% of the dividend and it would seem that should be passed through to us. Can you please look at this ASAP as our trader believes we should be receiving enhanced dividend treatment. Also, if you could provide me some sort of account statement/invoice showing this dividend, that would be rather helpful. Thanks.

-----Original Message-----From: Guthrie, John E [mailto:john.guthrie@lehman.com]

Sent: Thursday, December 01, 2005 4:07 PM

To: Joshua Langsam Cc: Thayer Swallen Subject: RE: withholding

yes
----Original Message---From: Joshua Langsam [mailto:Joshua.Langsam@tudor.com]
Sent: Thursday, December 01, 2005 3:47 PM To: Guthrie, John E; Joshua Langsam Cc: Thayer Swallen Subject: RE: withholding So, BVI would receive 85% then, right? ----Original Message----From: Guthrie, John E [mailto:john.guthrie@lehman.com] Sent: Thursday, December D1, 2005 3:46 PM To: Joshua Langsam Subject: RE: withholding provided you are domiciled in the US, you receive 100% of gross, if you are domiciled overseas, you receive 85% of gross ----Original Message----From: Joshua Langsam [mailto:Joshua.Langsam@tudor.com] Sent: Thursday, December 01, 2005 3:23 PM To: Guthrie, John E Subject: FW: withholding John, just to clarify, this would indicate that we receive 100% of gross on our AT&T dividend, no? From: Thayer Swallen
Sent: Thursday, December 01, 2005 2:41 PM
To: Joshua Langsam Subject: FW: withholding From John Guthrie From: Guthrie, John E [mailto:john.guthrie@lehman.com]
Sent: Thursday, December 01, 2005 2;41 PM To: Thayer Swallen; Lee, Christine Subject: RE: withholding USD w/h is long short 100% gross. ----Original Message----From: Thayer Swallen [mailto:Thayer.Swallen@tudor.com]

Sent: Thursday, December 01, 2005 12:29 PM To: Lee, Christine; Thayer Swallen; Guthrie, John E	
Subject: RE: withholding	
John could you please advise on the US rate	
Original Message	
From: Lee, Christine [mailto:christine.lee@lehman.com] Sent: Thursday, December 01, 2005 12:23 PM	
To: Thayer Swallen; Guthrie, John E	
Subject: RE: withholding	
We have specific rates set up depending on the country - GBP is	
long/short 100% net (or 90% gross). For other countries, for short pe	osns
it is 100% gross. For long posns, rates are as follows:	
Austria	
75%	
75%	
Belgium	
75%	
Denmark	
72%	
Finland	
100%	
France	
85%	
Germany	
78.9%	
Greece	
Greece	

```
100%
Ireland
100%
Italy
85%
Luxembourg
80%
Netherlands
75%
Norway
85%
Portugal
75%
Spain
85%
Sweden
95%
Switzerland
65%
```

This is for normal equities. For your index baskets, it is 85% long and 100% short.	
Original Message From: Thayer Swallen [mailto:Thayer.Swallen@tudor.com] Sent: 01 December 2005 17:14 To: Guthrie, John E; Lee, Christine Subject: withholding	
Can you confirm that standard withholding for dividend payouts is 15% on your end for LBIELPS? I know that when we get payment advice on dividends, it seems to always be for 85% of the quantity* price per share.	
Thanks, Thayer	
This message is intended only for the personal and confidential use of the designated recipient(s) named above. If you are not the intended recipient of this message you are hereby notified that any review, dissemination, distribution or copying of this message is strictly prohibited. This communication is for information purposes only and should not be regarded as an offer to sell or as a solicitation of an other to buy any financial product, an official confirmation of any transaction, or as an official statement of Lehman Brothers. Email transmission cannot be guaranteed to be secure or error-free. Therefore, we do not represent that this information is complete or accurate and it should not be relied upon as such. All information is subject to change without notice.	

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IRS Circular 230 Disclosure: Please be advised that any discussion of U.S. tax matters contained within this communication (including any attachments) is not intended or written to be used and cannot be used for the purpose of (i) avoiding U.S. tax related penalties or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.	
This message is intended only for the personal and confidential use of the designated recipient(s) named above. If you are not the intended recipient of this message you are hereby notified that any review, dissemination, distribution or copying of this message is strictly prohibited. This communication is for information purposes only and should not be regarded as an offer to sell or as a solicitation of an offer to buy any financial product, an official confirmation of any	
transaction, or as an official statement of Lehman Brothers. Email transmission cannot be guaranteed to be secure or error-free. Therefore, we do not represent that this information is complete or accurate and it should not be relied upon as such. All information is subject to change without notice.	
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IRS Circular 230 Disclosure: Please be advised that any discussion of U.S. tax matters contained within this communication (including any attachments) is not intended or written to be used and cannot be used for the purpose of (i) avoiding U.S. tax related penalties or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.	
This message is intended only for the personal and confidential use of	

the designated recipient(s) named above. If you are not the intended the designated recipient(s) named above. If you are not the intended recipient of this message you are hereby notified that any review, dissemination, distribution or copying of this message is strictly prohibited. This communication is for information purposes only and should not be regarded as an offer to sell or as a solicitation of an offer to buy any financial product, an official confirmation of any transaction, or as an official statement of Lehman Brothers. Email transmission cannot be quaranteed to be secure or expertee. There's transmission cannot be guaranteed to be secure or error-free. Therefore, we do not represent that this information is complete or accurate and it should not be relied upon as such. All information is subject to change without notice.

rom;	Dewey, John dr. [jdewey1@lenman.com].	Sent:12/12/2005 2:09 PN
0:[-]	Wecker, Jeff [jwecker@lehman.com].	
co:[-]		
ripiect.	FW: Confirmation of accounting for stat are expenses and use of LPS.	
cioleci	TY. Committation of accoming to: stat are expenses and use of Cr.S.	
	the mail that I've asked Marie to author vs. agree to I am not rtable committing ourselves down a path based on a forwarded val.	
> From > Sen! > To: () > Sub! > use > Yes. > From > Sen!	Original Message n: Gassman, Paul R t: Friday, November 18, 2005 4:46 PM	
	Stewart, Marie; Blumkin, Jason T ject: Confirmation of accounting for stat arb expenses and use PS	
> Mari	ie / Jason,	
> exect > Lehr > are resident > constant > to constant > to the point > to the point > constant > constant > constant > constant > to the point > to the poi	t want to confirm our understanding regarding accounting for cution fees associated with stat arb client and the use of the man Portfolio Swap (LPS). Since all fees and Lehman commissions invoiced, booked and collected separately from the swap, we still sider this as applicable for net accounting (i.e., expenses booked ontra revenue and netted against revs). That is, even though man trades in house accounts on behalf of our clients, all orders he specific terms that the client dictates (i.e., market or limit, nitity, security, etc.) The fact that we hold the positions and sfer all risk to the client via the LPS does not conflict with the capt that the expenses incurred by Lehman on behalf of the client in fact, client incurred expenses attributable not to Lehman but he client. Thus, appropriate accounting would be on the same net is as stat arb clients are currently accounted for who do not te the LPS.	
> Afte > work >	r your confirmation we can then communicate this determination and k to modify how such expenses are accounted for. by Thanks,	

```
Brier, Bruce [bbrier@lehman.com]
                                                                                                                 Sent:1/21/2005 8:10 AM
From:
To:[-]
             Meys, Michael [mmays@lehman.com]
Cc: [ - ]
Bcc: [ -
             RE: Swap vs CFD for off-shore counterparties.
  > ----Original Message-
 > From: Meys, Michael
> Sent: Thursday, January 20, 2005 1:06 PM
> To: Harrison, Kevin A; Brier, Bruce
  > Subject: Swap vs CFD for off-shore counterparties
  > Below are pros/cons of 2 derivative products available for economic
  > and dividend performance on single equity stocks:
  > SWAP
  > Pros
  > Street wide acceptance of ISDA agreement

    ISDA is entity specific, although doc exemptions are available for
    other Lehman entities (simple web based process)
    Able to define terms of the trade for each specific transaction

  > including but not limited to, duration, resets, dividend pass though,
  > Variations of hedge execution to fit customer needs
  > Monitored and managed in the DeltaOne Risk system

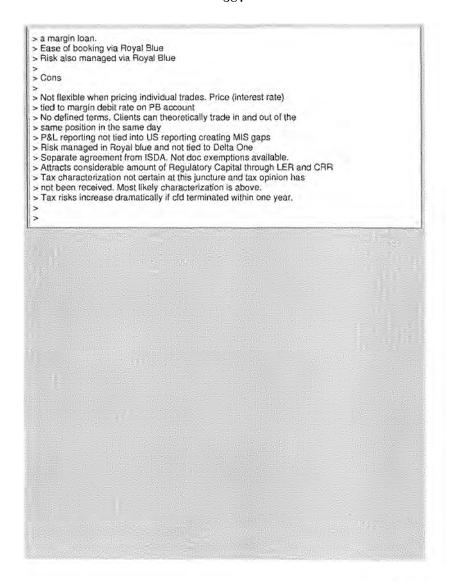
    Automated confirmation process via Smart ticket and Middle Office
    Easy to define various strategies for internal MIS

 > Currently not an acceptable structure for yield enhancement as stated
 > by the tax department

    Potential tax risk (related to dividend enhancement)
    Market risk depending on hedge execution
    Considered a contract and not a security
    Possible recharacterization as securities loan with corresponding WHT.
 >
> CFD
 > Pros
 > Acceptable structure for dividend yield enhancement
 > Considered a perpetual structure

    Pricing consistent with traditional PB account
    Tax characterization not clear but most likely considered a derivative
    security issued by LBIE and not a notional principal contract

  > Position can either be levered or not with the leverage in the form of
```



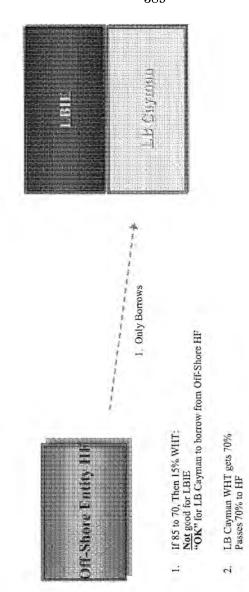
Clients Who Executed Offshore Stock Lending Agreet Cayman Islands Stock Lending Transa	
Clients	
Barclays Global Investors Ltd.	
Goldman Sachs Europe	
Greenlight Reinsurance, Ltd.	
JPMorgan Chase Bank	
LGT Bank in Liechtenstein AG	
OZ Master Fund, Ltd.	
Royal Trust Corporation of Canada	
Société Européenne de Banque SA	
State Street Bank and Trust Company	
Union Bancaire Privee	

= Redacted by the Permanent Subcommittee on Investigations

List is compiled from set of offshore stock lending agreements

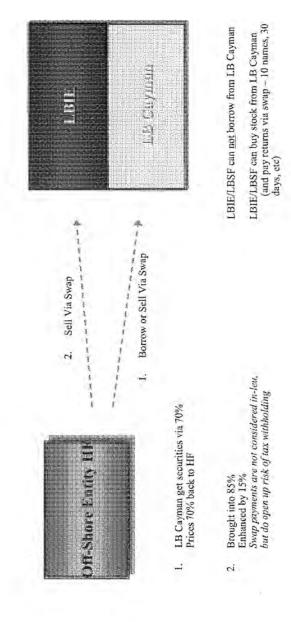
Lehman can enhance the Client's Appreciation (Dividend Return) via Borrowing Stock (Strict procedures apply, case by case basis)

389

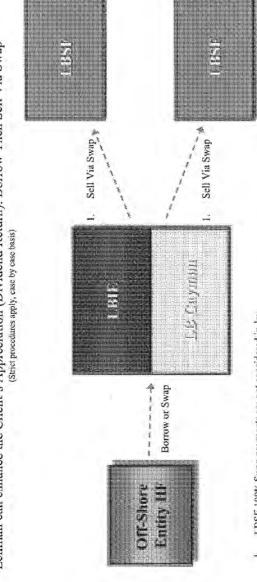


Lehman can enhance the Client's Appreciation (Dividend Return): Borrow or Sell Via Swap

390

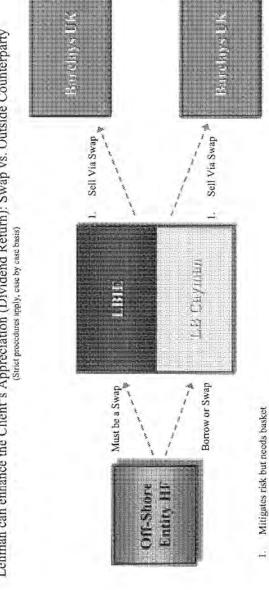


Lehman can enhance the Client's Appreciation (Dividend Return): Borrow Then Sell Via Swap



LBSF 100% Swap payments are not considered in-leu Risk that swap will be recharacterised as in-leu (which could then be withheld at higher levels) To mitigate basket, need basket to be: I-month, 15-20 stocks No more than 20% concentration in a single name

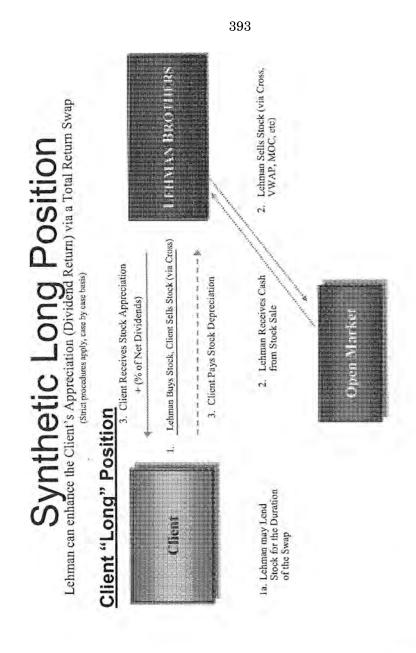




Stock loan can be o.k. for single stocks

(Some HFs can not lend stock)

Stock Loan may be preferred - Loaning Stock is <u>not</u> a taxable event - Selling Stock is a taxable event



LPS Guidelines

- Lehman c/p is LBIE [non-US customers referred to LBIE, what is importance of this? Does it matter that all OTC customers are generally trade with LBIE?]
- · Hedge fund customer [can institutions trade it?]
- Non-US customers [defined how—says ok if advisor is onshore. Can US customers trade it? Says cannot be engaged in a US trade or business can't trade if they are?]
- Exposure can be long or short, or both.
- Pays the return on an index—does it matter that structured as a basket swap under ISDA?
- Underlying is publicly traded equities, including US provided they trade on NYSE, AMEX or NASDAQ, with market cap in excess of \$5 billion.
- Documented under ISDA, separate confirm for each LPS; ok to have other swaps away from LPS; ok to be trading physical in PB account
- · Daily reporting [check what this looks like]
- Changes to index run through filter (e.g. RTL) that rejects orders if Lehman can't hold as a hedge
- Changes can be daily, but some positions should be in place for several months
- Non-tax business reasons, including operational efficiency. [Is it necessary that there be margin efficiency?]
- No bilateral collateral allowed?
- Collateral between 1-20% of value of notional. [How to apply Reg U for US customers as required by Legal? What does footnote 11 mean?]; daily collateral marks. [types of collateral allowed?], interest on collateral posted.
- Monthly resets.
- 1 to 1.5 year term
- Unilateral right to terminate
- Cash settled
- No crossing delta
- LBiE is calculation agent
- · Hedge based pricing; ok if a hedge is always executed
- Customer cannot enter swap if a principal purpose is to avoid US withholding tax. [How do we know?]
- LBSF/LBIE Hedge Swap has to anticipate significant netting of positions so that Hedge Swap doesn't equal LPS positions.
- LBIE has to make a profit, taking into account Hedge Swap [what is pricing of the Hedge Swap?]
- LBIE's officers have to exercise management and control over LBIE's activities [traders in US enter trades on LBIE's books – how do we monitor/control?]
- · [How many names in the index?]

- . [What dividend level should we pay? Can we charge an offshore customer more than an onshore if terms are otherwise the same?]
 [is it necessary that client not direct exchange where hedge is executed?]

CN=Jeffrey Liggitt/O=Maverick

From: Sent: To:

CN=3effrey Liggitt/O=Maverick 2/21/2007 5:01:49 PM Steve_Bokiess@ey.com Chad,Chisolm@maverickcap.com; "Shaheda Patel" <Sharieda,Patel@ey.com> Re: AMTD Dividend

Subject:

No, it is from an arrangement with a broker where they hold our shares in their name when the dividend is paid so they do not have to withhold tax due to Levered's foreign ownership.

Steve, Bokiess@ey.com 02/21/2007 03:52 PM

To Jeffrey,Liggitt@Maverickcap.com

cc Chad.Chisolm@mavenckcap.com, "Shaheda Pater" <Shaheda.Patel@ey.com>,

Steve.Bokiess@ey.com Subject Re: AMTO Dividend

Are you receiving the "dividend" as a swap payment?

Steven J. Bokiess Ernst & Young, LLP Sears Tower 233 South Wacker Drive Chicago, 1L 60666-6301 Phone: 312-879-6550 Fax: 5867-514-482 E-Mail: steve.bokiess@ey.com

Jeffrey.Liggitt@Maverickcap.com 02/21/2007 12:02 PM

"Steve Bokiess" <steve.bokiess@ey.com>

"Shaheda Patel" <Shaheda.Patel@ey.com>, Chad.ChisoIm@maverickcap.com Subject AMTO Dividend

Permanent Subcommittee on Investigations EXHIBIT #41

MAV0001413 CONFIDENTIAL

Hello -

We have an issue we wanted to run by you regarding a dividend received in Maverick Fund II, Ltd. (Levered).

In 2006, Levered received a \$6 payment from AMTD which was classified as 50% dividend and 50% return of capital based on AMTD's calculations. Levered enhanced this dividend so all it was treated as substitute dividend. We were wendering if you know of any way that we could treat some of the enhanced dividend as return of capital instead of ordinary income (since it was a sub dividend). We have not found anything that would suggest such treatment but il could be quite beneficial from a tax perspective if we could justify a return of capital treatment.

Any thoughts?

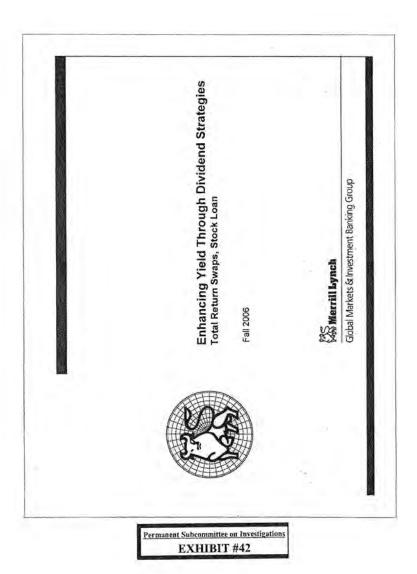
Jeffrey Liggitt Maverick Capital, Utd. 300 Crescent Court, 18th Floor Dallas, TX 75201 Phone: (214) 880-4025 Fax: (214) 880-4159

Any U.S. tax advice contained in the body of this e-mail was not intended or written to be used, and cannot be used, by the recipient for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code or applicable state or local tax law provisions.

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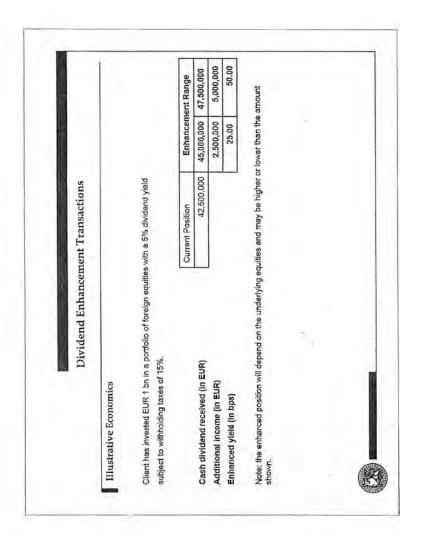
Notice required by law: This e-mail may constitute an advertisement or Notice required by law: This e-mail may constitute an advertisement or solicitation under U.S. law, if its primary purpose is to advertise or promote a commercial product or service. You may choose not to receive advertising and promotional messages from Ernst & Young LIP (except for Brist & Young Online and the ey.com website, which track e-mail preferences through a separate process) at this e-mail address by forwarding this message to no-more-mail@ey.com. If you do so, the sender of this message will be notified promptly. Our principal postal address is 5 Times Square, New York, NY 10336. Thank you. Ernst & Young LLP

> MAV0001414 CONFIDENTIAL



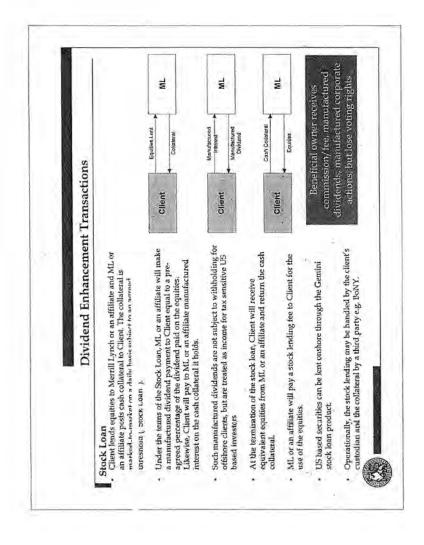
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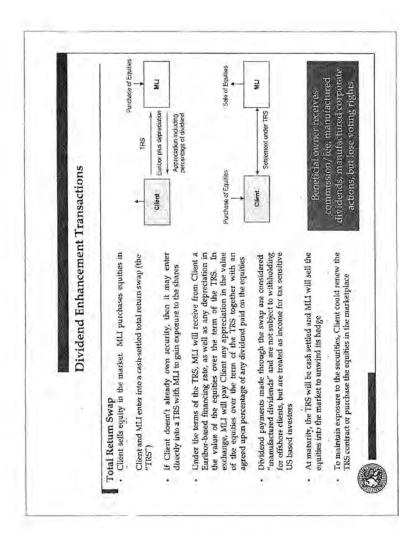
Assume dividend entitlement after withholding tax is 71%, a broker offers to pay 97%, for an enhancement of 26%. With a dividend notional of \$5,000,000, the investor would pick up an additional \$1,300,000. ■ Dividend strategies may be packaged through a number of products, such as Swaps, Zero-Strike Calls or Stock Loan Clients through various strategies can enhance the dividend yield on holdings of foreign stocks or indices and pick up additional yield Owners of foreign stock are subject to withholding tax on dividends which can reach 30% depending on country where the fund is domiciled and where the stock is purchased ■ The level of enhancement ultimately depends ont en market, the stock, the yield, trade size and duration Funds may not receive full benefits through custodian agreement as custodians may enter into trade for Dividends pavable on cauities issued by a foreign entity are generally subject to withholding taxes. Brokers may have the ability to obtain a higher dividend than clients holding such stocks Investors can enter into a product whereby they receive an enhanced dividend Dividend Enhancement Transactions ADRs are treated as the underlying from a withholding tax perspective Dividend Strategies their own accounts



Document 808-17

1600-ISd-7W



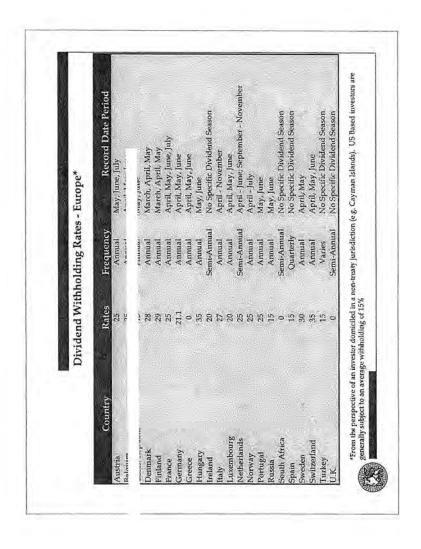


Swaps vs. Stock Loan		
- Constitute	della	Stock Loan
Minimum Holding Period 30	30 days	15 days
Documentation 5	Requires ISDA (International Swaps and Derivatives Association) documentation	Requires OSLAs (Overseas Securities Lending Agreement)
Collateral	XXX	XXX
Dividends" th	Investors receive dividend equivalent payments through the swap, which are Non-Qualified.	Investors receive substitute dividends through stock loan, which are Non-Qualified
Costs po	Financing and commissions (for establishing new positions.) Existing positions may be crossed on one leg, or both - depending on the country	
Withholding W	Withholding depends on the country. Average withholding for non-treaty countries is 25%, for U.S. 15%	holding for non-treaty countries is 25%, for U.8
Enhancement h	Average Level of enhancement varies between 90 and 97% of gross dividend and depends on the country, the stock, the yield, trade size, etc.	and 97% of gross dividend and depends on
Swap vs. Stock Loan m	Swaps and stock loan generally return a similar level of enhancement, but in some markets, one may be more beneficial than the other	el of enhancement, but in some markets, one
FG	For existing positions, swaps may represent a taxable event	ble event

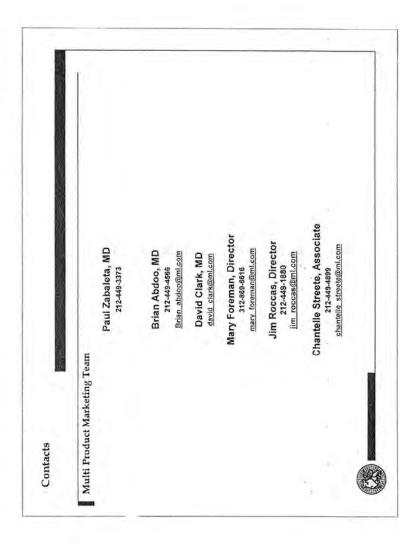
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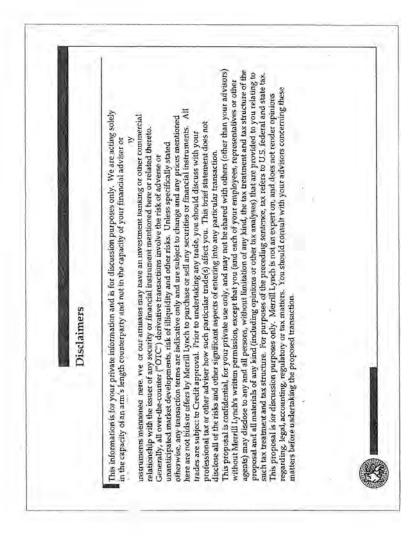
		-	Compared with Divident Lieura Strater Tierra Sollaria Sol		
Ticker	Company Name	Dividend Yield	Dividend Vield (Jan 9 close) Dividend Payment	1900042	Next Projected Ex-Date
GM	General Motors Corp	8.9%	\$22.41	\$0.50	Feb 09, 06
CZN	Citizens Communications Co.	8.1%	\$12.40	\$0.25	Mar 16, 06
EOP	Equity Office Properties Tr	6.2%	\$32.15	\$0.50	Mar 29, 06
PGL	Peoples Energy Corp	6.0%	\$36.63	\$0.55	Mar 17, 06
AIV	Apartment Invt & Mgmt -CI A	5.9%	\$40.65	\$0.60	May 18, 06
PGN	Progress Energy Inc.	5.6%	\$43.38	19'0\$	Apr 07, 06
UST	UstInc	5.5%	\$41.25	\$0.57	Mar 10, 06
I	At&T Inc	5.4%	\$25.02	\$0.33	Apr 06, 06
CAG	Conagra Foods Inc	5.3%	\$20.56	\$0.27	Jan 26, 06
- AZ	-Verizon Communications Inc	5.3%	\$31.48	\$0.42	Apr 06, 06
RAI	Reynolds American Inc	5.2%	\$99.55	\$1.25	Mar 08, 06
KSE	Keyspan Corp	5.1%	\$36.66	\$0.47	Apr 11, 06

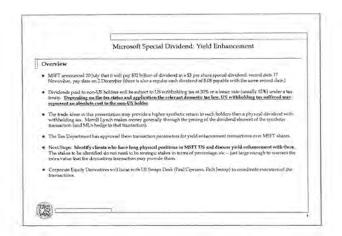
9600-ISA-7W



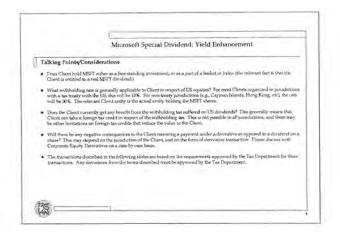
Country Rates Frequency Record Date Period			The second secon
35 Varies 35 Varies 25 Quarterly 5 Varies 36 Varies 30 Cuarterly 30 Annual 27 Semi-Annual 30 Annual 30 Annual 30 Semi-Annual	Country	Frequency	Record Date Period
25 Varies 25 Quarterly 5 Varies 36 Varies 30 Varies 30 Annual 7 Semi-Annual 7 Semi-Annual 30 Semi-Annual 4 Annual 4 Annual		Varies	No Specific Dividend Season
25 Quarterly 5 Varies 35 Varies 30 Quarterly 0 Semi-Annual 0 Annual 27 Semi-Annual 27 Semi-Annual 30 Semi-Annual		Varies	No Specific Dividend Season
5 Varies 35 Varies 36 Quarterly 0 Semi-Amual 7 Semi-Amual 27.5 Amual 27.5 Amual 27.5 Amual	TO.	Quarterly	No Specific Dividend Season
35 Varies 30 Quarterly 30 Semi-Amual 7 Semi-Annual 77 Semi-Annual 30 Semi-Annual 27.5 Annual 30 Semi-Annual		Varies	No Specific Dividend Season
30 Quarterfy 0 Semi-Armual 0 Annual 7 Semi-Armual 27.5 Semi-Armual 27.5 Semi-Armual		Varies	No Specific Dividend Season
0 Semi-Amual 0 Annual 7 Semi-Amual 27.5 Annual 30 Semi-Annual		Quarterly	No Specific Dividend Season
0 Semi-Annual 0 Annual 7 Semi-Annual 27.5 Annual 30 Semi-Annual 20 Annual	Sia		
0 Annual 7 Semi-Annual 27 Semi-Annual 27 A Annual 30 Semi-Annual 20 Annual		Semi-Annual	March - May, August - September
7 Semt-Annual 27.5 Annual 30 Semt-Annual 20 Annual		Annual	May - Aug
27.5 Annual and annual and annual and annual		Semi-Annual	March, September
saland 30 Sem-Annual 20 Annual		Annual	Dec
	aland	Semi-Annual Annual	Feb - April, July - Sept May - Nov
	•		



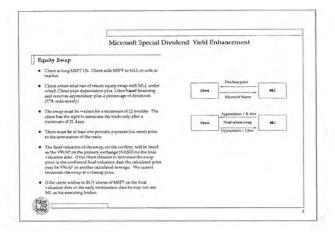




CONFIDENTIAL



CONFIDENTIAL



CONFIDENTIAL ML-PSI-00147143

Microsoft Special Divide	nd: Yield Er	hancement	
Option: Exchange Traded (flex option)-			
Check to long MSFT US. Client sells MSFT to MLL, or sells to market.			
MLI sells / Customer bays Flexoption call on MSFT MG2 bays / Customer sells Flexoption put on MSFT	Cherk	Proclass price Microsoft Shares	HJ.
Option contracts will be listed by the CBOE. Strikes and maturities will be as close to regular listed series as possible.			
Contracts are physically settled.	Otherst	partirall option cambo	NA.
 Ml. may not facilitate more than 80% of the customer's order. 		Client selbs a feet	
[Add paragraph re-price adjustment in regular listed series]			

CONFIDENTIAL ML-PSI-00147144

Microsoft Special Divide	nd: Yield E	nhancement	
Option: Over the Counter			
 Client is long MSFT US. Client sells MSF7 to MLL or sells to market. 			
Mil.i sells / Customer buys CTC call on MSFT		Purchaseprice	
■ MLI buys / Customer tells OTC put on MSFT	Chere.	Marontiform	140
 Option contracts should be written as similarly to listed option contracts as possible. 		Clent begy a Crit	
 Contracts must include a clause that in the event of a corporate action or special dividend the counterparton agent to adjust their contracts in the same method as the CBOB (Exchange Adjustment) 	Client	yaykali iyisin rendo. Cimri selka Pat	MA.1
Contracts must be cash settled			
 The final level will be listed as the VWAP on the primery exchange (NASD) on the linel valuation date. We cannot terminate the options using a closing price as a reference level. 			
 If the chient wishes to BUY shares of MSFT on the final valuation due or the early sermination date he may not use ML as his executing broken. 			

CONFIDENTIAL ML-PSI-00147145

Page 1 of 2 Message Cox, Byron From: Molino, Neil (IED) [Neil Molino@morganstantey.com] Sent: Monday, December 06, 2004 3:25 PM Subject: FW: swap fills 11/03 is this where we tell him about side by side vwap? From: Mead, Jeff [WELCH CAPITAL PARTNERS LLC (New York)] Sean: Monday, December 06, 2009 3:21 PM Tis: Molino, Neil (IED) Subject: RE: swap fills 11/03 Nell, one tast thing. Are there any restrictions on us trading MSFT outside of the swap, would we end up taking the withholding if we bought it outside of the swap? As I'm sure you know now, we didn't actually know the inner workings of this swap business, chalk that up to our ignorance. We were expecting to hold the swap until the dividend was paid and then we would exit the swap and get our shares back from you directly, or at least that's what we thought. You telling me that we need to hold the swap until we decide to exit the position entirely changes the cost structure of the transaction because assuming we want to hold the position, we would have to hold on to the swap longer. Is there any sort of time period we need to be out of the swap before we can buy MSFT back? If we had already bought additional shares of MSFT after we entered the swap would we have exposed ourselves to the withholding? .Jeff -Original Message From: Nolin, Neil (IED) [mailto:Neil.Molino@morganstanley.com]
Sent: Monday, December 05, 2004 2:28 PM
To: Jeff Mead Cr: swap Subject: RE: swap fills 11/03 When you no longer want the economic position all you have to do is give us an order to unwind (or partially unwind) the swap. We are a full trading desk. Thanks so much, From: Mead, Jeff [WELCH CAPITAL PARTNERS LLC (New York)] Sent: Monday, December G6, 2004 1:54 PM Tar Molino, Nelf (JED) Subject: RE: swap Rils 11/03 Neil if I wanted to exit out of this swap, now that the dividend has been paid, what do we need to do to get that going? Jeff -Original Message-From: Molino, Neil (IED) [mailto:Neil.Molino@morganstanley.com] Sent: Wednesday, November 03, 2004 7:55 PM To: Jeff Mean Cc: rpgswaptrading Subject: swap fills 11/03 MS-INT 004327 1/18/2008

MS-PSI 001399

Permanent Subcommittee on Investigations EXHIBIT #43

Message

Page 2 of 2

Please see attached swap fills.

Thanks much, Neil

They is not an other (or solicitation of an other) to buy/sell the socionises/instruments mentioned or an other confirmation. Morgan Staaley may deal as pancipal of or over or act as market makes for secunites/instruments mentioned or may advise the issues. This is not repaired and is not from his illustration of the property of future returns the adviscosity of future returns the additional information, instantin reports and important disciplinary, product one or assume the property of future returns the additional information, instantin reports and important disciplinary, product one or assume the property of future returns to the property of t

The is not an offer (or solvotation of an offer) to buy/sell the secunius/instruments mentioned or an official portunation. Herejan Stanley may deal as principal in or own or act, as maintot, maker for secunius/instruments mentioned or may advise the iscusors. This is not relocated and is not from MS desponds to the intervent of the control of the intervent of

MS-INT 004328

1/18/2008

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MS-PSI 001400

MSFT dividend enhancement - rules of engagement-Question.

Page 1 of 3

From:

john.marion@ubs.com

Sent:

Thursday, October 14, 2004 11:11 AM

To:

markus.foellmi@ubs.com

Subject: MSFT dividend enhancement - rules of engagement-Question.

Importance: High

Hi Folks -

At long last (sorry for the wait, but there's been a lot of work involved), here are the final rules of engagement we have to At long last (sorry for the wait, but there's been a lot of work involved), here are the final rules of engagement we have to address to from this kind of trade. This has been looked at by internal as well as external US to, London tax, London tax that seem better on the face of it, but our tax counsel is adumant that such trades are quite risky and at the end of the day, we will never get the legal opinion needed to put them on. In fact, for elients who are seriously considering those kinds of trades, we'd be happy to give them a copy of our legal opinion once we get it and/or get them on the phone with our legal counsel to discuss the trade details, I really think our attention to legal details will end paying off for us and our clients. People are concerned about this, It will get in the papers. We have to do it right. At least one client has already decided not to trade at all because of the possible legal problems, but we will try to change their minds once we show them our way.

We have 3 basic possibilities.

- 1) stock loan client loans stock to UBS Caymans, receives 70% of the dividends + stock loan fee equal to 27% of the dividend, for a total of 97%
- 2) Liffe futures see below
- 3) BLOC see below

Please see below for the restrictions on the Liffe futures and BLOC trades. If you really think about it, it's not so bad. Mike Unbersax and I are fully versed on this stuff and stand ready to do whatever is necessary to get these trades done for our customers in as seamless a manner as possible. Please speak to one or the other of us if anything is unclear, ...)

Let's go get 'em

Regards, John

All trades;

- 1) UBS will not commit, upon entry into the LIFFE trade, to broker the client's unwind(s);
- 2) UBS will not in fact broker any "complete" unwinds (as opposed to client-size-related adjustments) of either the LIFFE or the BLOC trade within 30 days of entry into the trade;
- if UBS in fact uses MOC pricing for either entry or unwind of a LIFFE or BLOC trade, UBS will not expect the trade-related volume in the MOC market on any day to exceed 20% of the MOC volume on that day; and

1/28/2008

Permanent Subcommittee on Investigations EXHIBIT #44

UBS 000606

MSFT dividend enhancement - rules of engagement-Question.

Page 2 of 3

4) with respect to volume limitations in connection with the LIFFE trade, the client could take the offsetting position with the exchange even if UBS did not broker the unwind (i.e., the open volume resulting from the trade will not be so high that the exchange wouldn't take the client's unwind position absent a matching UBS position, or that the resulting "bid-ask spread" would be economically prohibitive).

Futures trade

- I) UBS would broker the sale of MSFT shares by the client;
- 2) UBS would broker the purchase of Liffe listed MSFT futures by the client, as well as provide iquidity (i.e. take the short side of the client's futures position);
- 1) & the hedge for 2 above would not be crossed with each other, or done at the same time, however daily VWAP trades, risk prices or closing (if allowed) for each would be allowed;
- 4) the futures are true futures, i.e. margined, not prepaid and of the standard, exchange listed variety.
- 5) UBS will broker the sale of futures by the client before expiry (if so desired) versus VWAP r market close (if possible), as well as provide liquidity (i.e. take the long side of the lient's futures sale);
- 6) UBS will not broker the purchase of MSFT shares by the client on either trade date of the closing futures trade or expiry date of the futures;
- 7) UBS will encourage the client to hold the position a minimum of 30 days, but will provide liquidity if necessary (i.e. size of client's fund will fluctuate, so they may need to adjust their MSFT exposure fairly often);
- 8) UBS would like to be as much of the volume/open interest of the futures on the exchange as possible without jeopardizing our tax position (we need guidance on this but I can imagine being a large majority of both, if we can).

BLOC trade:

- 1) UBS would broker the sale of MSFT shares by the client;
- 2) UBS would issue and sell to the client a BLOC Certificate as described below;
- 3) 1 & hedge for 2 above would not be crossed with each other, or done at the same time, however daily VWAP trades, risk prices or closing (if allowed) for each would be allowed;
- 4) The BLOC is a Certificate which basically consists of a long position in a low-strike option (\$0.55), and a short position in a higher-strike option with the following characteristics: a) expiry will be 30 days to 5 years, b) each settled, c) the delta of no more than 90% (i.e. 10% chance that the BLOC firesishes out of the money if held to maturity);
- 5) Adjustment of the BLOC for the payment of a special dividend would be either by reducing both strikes by the amount of by Augustulein of the Boese in the particular of a special dividend while keeping the underlying as 1 MSFT share and then adding some percentage of the special dividend as cash, or by changing the underlying itself to a basket consisting of 1 share of MSFT and some percentage of the special dividend cash, while keeping the strike the same. (i.e. the cash can come out of the underlying if the strike of the low strike option is high enough to accommodate it by being adjusted down by the amount of the dividend, otherwise it will have to remain in the underlying);
- 6) UBS will make a market in the BLOC for the client on risk prices for small sizes (once again, client may have to adjust his position), while early unwind of the entire position (if so desired) would be versus VWAP or market close (if possible);
- 7) UBS will not broker the purchase of MSFT shares by the client on either trade date of the closing BLOC trade or expiry

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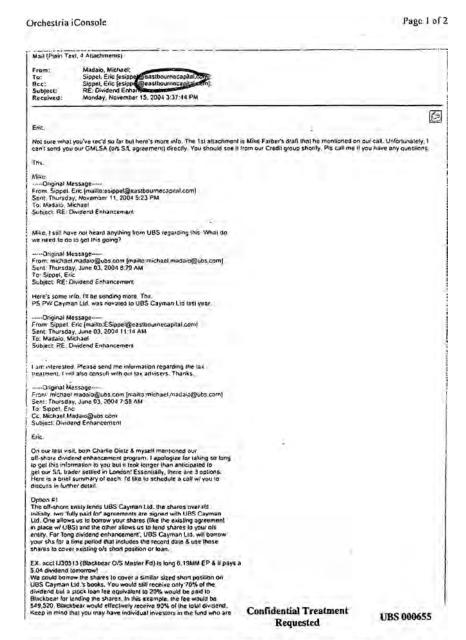
MSFT dividend enhancement - rules of engagement-Question.

Page 3 of 3

date of the futures;

8) UBS will encourage the client to hold the position a minimum of 30 days, but will provide liquidity if necessary (i.e. size of client's fund will fluctuate, so they may need to adjust their MSFT exposure fairly often).

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Page 2 of 2

not subject to the 30% withholding. You would want to subtract these holders' positions from the shares to be enhanced.

For 'shan dividend enhancement. UBS Cayman Ltd, lends the shares to your als entity which is shart the shares. Over itd, your entity will be charged only 70% of the dividend glus a stock haan fee. This fee: will be anywhere from 23 to 27%.

Ex. If the als soci is shart 500,000 DOW, the account would be charged 70% of the div (33,5 cents) plus a borrow fee of say 26%. The total savings would be 500M*335*4% or 55,700.

Buy the stock on swap and receive: 100% of the dividend. This scenario is the cheapest solution but it's meant only for positions where the initial is to hold the position long term. There would also be financing costs.

Option #3
Similar to option #1, the ofs entity lends shares to UBS Cayman Ltd.
which executes a swap with another side. This is a min 30 to 45 day
rade although it's possible to sell the shares before that (but it may
effect the pricing). We would use this scenario if there were no short
positions or lending opportunities in UBS Cayman Ltd.

Pls let me know if you are interested (especially in EP as it goes record tomorrow). It sond you some relevant info partaining to IRS Rule 97-66 shortly. If you have any questions, pts call me at (212) 713-1164.

Nike
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3 UBS-withholding-

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opinion pdf (34 Kb)

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UBS 000656

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From: Sent: Madaio, Michael

Tuesday, November 30, 2004 7;04 PM jim.chen@maverickcap.com RE: are u long any of the following away: Subject:

good catch, thx!

----Original Message-----

From: jim.chen@maverickcap.com [mailto:jim.chen@maverickcap.com] Sent: Tuesday, November 30, 2004 5:51 PM To: Madaio, Michael

Subject: Re: are u long any of the following away:

We hold CCL and TYC, but these companies were incorporated outside the US, so they don't have any withholding tax. No reason for us to enhance them.

<michael.madaio@ubs.c om>

To

11/30/2004 04:44 PM

<JIM_CHEN@MAVERICKCAP.COM>

CC

Subject

away:

are u long any of the following

EK (178,100) 277461109 46626D108 NILSY (199.050) 44919P102 IACI

(200, 209) MER 590188108 (242,850)

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IAC INTERACTIVECOR COM USDO.01 MERRILL LYNCH & CO COM USD1 .333

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Thx!

Mike

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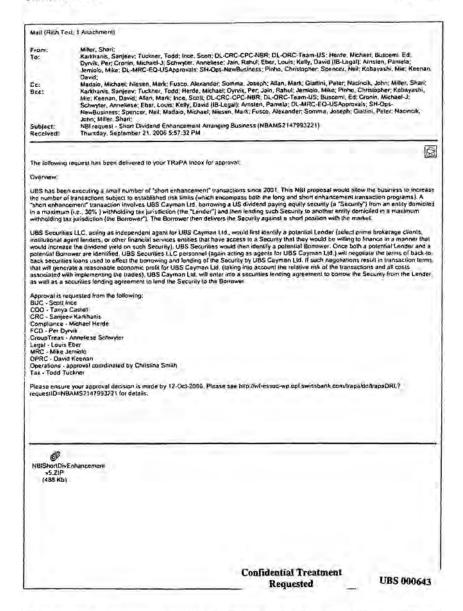
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FW: NBI Cayman Short enhancement

Page 1 of 1

REDACTED

From: Niesen, Mark

Sent: Thursday, September 21, 2006 4:03 PM

To: Fusco, Alexander, Miller, Shari

Cc: Tuckner, Todd; Karkhanis, Sanjoev; Hadaio, Michael

Subject: N8I Cayman Short enflancement

Importance: High

Please find attached the NBI for Cayman short enhancement, which we request be circulated for ratification through the usual processes. (This replaces the one sent 9/14). Either Mike or myself will be happy to provide any clarifications and answer any questions which may arise.

Best regards, Mark Niesen

Prime Brokerage Services
Executive Director
Tel: 212-713-2533
Email: mark.niesen@ubs.com
<<NBIShortDwEnhancement v5.ZIP>>

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UBS 000503

1/28/2008



UBS NEW BUSINESS PROPOSAL

ANITIATIVE NAME TO THE	Short Dividend Enhancement Arranging Business
OBUEGINAL STATE	Obtain approval for UBS Securities to act as agent for UBS Cayman Ltd with respect to arranging "short enhancement" transactions.
APPROVAL STREETINED BY	ASAP
TARGET SPARADATE A DE	ASAP.
BUSINESSISPONSORUS S	Michael Madaio
PROJECTICONDACTE TO A	Mark Niesen 212.713.2533
RESPONSIBLE TRADERISTS	Michael Kelly

DUBACKGROUNDS A STORMAN STORMAN

- Many of UBS's US Equity Prime Brokerage hedge fund clients engage in programs designed to increase the yield associated with owning US dividend paying equities. Providing dividend yield enhancement services is essential to retaining existing prime brokerage clients and increasing trading volumes with respect to each client. Yield enhancement is fast becoming a core aspect of all equity prime brokerage platforms. UBS must provide yield enhancement services in order to remain competitive with our investment banking peers.
- The short enhancement program (as described below) is designed to be used in conjunction with the established long enhancement program to meet specific client needs and generale additional trade flow for UBS's prime brokerage business
- UBS has been executing a small number of "short enhancement" transactions since 2001. This proposal would allow the business to increase the number of transactions subject to established risk limits (which encompass both the long and short enhancement transaction programs).

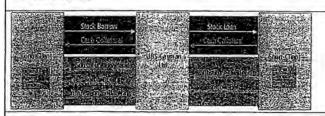
200 INITIATIVE SUMMARY/DESCRIPTION:

- A "short enhancement" transaction involves UBS Cayman Ltd. borrowing a US dividend paying equity security (a "Security") from an entity domiciled in a maximum (i.e., 30%) withholding (ax jurisdiction (the "Lender") and then lending such Security to another entity domiciled in a maximum withholding tax jurisdiction (the Borrower'). The Borrower then delivers the Security against a short position with the market.
- Consistent with the current method of executing short enhancement transactions, UBS Securities LLC, acting as independent agent for UBS Cayman Ltd., would first identify a potential Lender (select prime brokerage clients, institutional agent lenders, or other financial services entities that have access to a Security that they would be willing to finance in a manner that would increase the dividend yield on such Security). UBS Securities would then identify a potential Borrower. Once both a potential Lender and a potential Borrower are identified, UBS Securities LLC personnel (again acting as agents for UBS Cayman Ltd.) will negotiate the terms of back-to-back securities loans used to effect the borrowing and lending of the Security by UBS Cayman Ltd. If such negotiations result in transaction terms that will generate a reasonable economic profit for UBS Cayman Ltd. (laking into account the relative risk of the transactions and all costs associated with implementing the trades), UBS Cayman Ltd. will enter into a securities lending agreement to borrow the Security from the Lender, as well as a securities lending agreement to lend the Security to the Borrower. More specifically, UBS Cayman may:
 - 1. Borrow a Security from a hedge fund hedged with a securities loan to another

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hedge fund;

- Borrow a Security from an institutional agent lender (acting as agent for a Lender) hedged with a securities loan to a hedge fund; or
- Borrow a Security from a hedge fund or agent lender hedged with a securities loan to a financial services entity (e.g., a subsidiary of ING, or Nomura).
- Short enhancement transactions are designed to allow UBS clients that wish to sell short a dividend paying US equity to do so at a lower cost than would be typical in the market. This cost savings results in a higher yield with respect to the short position. In a typical short sale transaction, the short seller would borrow shares to deliver against its short position, and would be required to pay substitute dividends to the securities lender equal to 100% of the dividends paid on the borrowed shares. In a short enhancement transaction, the short seller is contractually obligated to pay substitute dividends that are less than the actual dividend paid on the associated shares. For example, instead of paying 100% of the dividends, a short seller in a short enhancement transaction would be required to pay only 95% of the dividends paid on the relevant shares as a substitute payment to the securities lender. The short seller's economic return on the short saie is therefore "enhanced" by 5% of the dividend associated with the short position.
- The economic "enhancement" to the short seller is funded through the acquisition of shares that are on the whole cheaper to borrow than the overall cost charged to the short seller. These "cheap" shares are typically acquired by borrowing a Security from an entity resident in a maximum withholding tax jurisdiction in a manner which legally avoids the US withholding tax that would have otherwise been imposed upon the dividends paid on such Security. As no withholding tax is due with respect to such a transaction, Lenders can enjoy an economic benefit in the form of an increased post-tax dividend yield on their stock position. Lenders typically receive an amount equivalent to approximately (85%) of the actual dividend rather than the 70% actual dividend that they would have received on a physical long position in the same Security.
- By participating in short enhancement transactions, UBS Cayman Ltd. is able to earn a low risk arbitrage spread equal to the difference in rates on the cash collateral legs of the securities loans plus a spread on the dividend yield (the withholding tax being essentially equivalent to an economic carrying cost which is reduced through this booking model and divided among the parties to the transaction).
- For example, in a typical short enhancement transaction, UBS Cayman Ltd. would borrow a Security from a Lender and would be obligated to pay 85% of the gross dividend as a substitute dividend to that Lender. UBS Cayman Ltd. could then lend the Security acquired from the Lender to a Borrower. The Borrower would be contractually obligated to pay a substitute dividend to UBS Cayman Ltd. equal to 95% of the actual dividend UBS Cayman Ltd. would therefore earn a spread equal to 10% of the dividend. This spread would be in addition to the interest spread it would earn on the cash collateral legs of the transactions.



 UBS Securities LLC will earn a fee for its agency arranging services equal to 25% of the profil earned by UBS Cayman Ltd. for entering into short enhancement transactions. This

> UBS New Business Proposal Page 2 of 5

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fee is consistent with fees charged to third party clients for similar services.

- Trades are documented under standard Securities Lending agreements (typically GMSLAS).
- Market intelligence indicates that similar products are being currently offered by Morgan Stanley, Goldman Sachs, Lehman Brothers, Memil Lynch, ING, & others.
- Operations and systems are currently in place.
- This NBI excludes trades where stock is borrowed and traded vs. a swap (previously 4 approved as the "Long Enhancement Program."

BIOSPROFITABILITY/IREVENUE ANALYSIS TO THE FOREST AND THE

- ❖ Start up Costs none
- Estimated annual revenue: UBS Cayman Ltd. - \$3 to \$10 million annual (direct).
 UBS Securities LtC - \$750,000 to \$2.5 million direct (25% of UBS Cayman Ltd.'s profits), as well as significant indirect (per below).
- Other revenue impact: Product is a significant factor in UBS Securities LLC's ability to attract & retain Equity Prime Brokerage clients.
- Impact on headcount None to plus one (with growth).
- Expected average trade size \$30 million,
- Transaction volume 5 to 20 per week.

A OF BOOKING ALXEGUTION PROCEDURES

- Name of booking legal entity UBS Cayman Ltd.
- Name systems where positions will be booked ADP, Loanel

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Additional systems used (analytics & reporting) - DSS, IDEAL

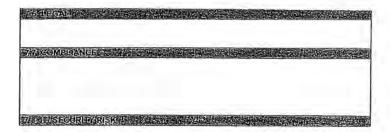
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UBS New Business Proposal Page 4 of 5

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LEGAL:	Lou Eber
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OPERATIONS:	
GROUP TREASURY:	
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OTHER:	

ATTACHMENTS

UBS New Business Proposal Page 5 of 5

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MS-141 From: (IED) Wednesday, January 09, 2002 9:05 AM TP-027 @chase.com TP-099 @jpmorgan.com; TP-Sent: To: TP-101 Dipmorgan.com: Cc: @chase.com; TP-102 TP-104 @jpmorgan.com Re: MSIL Lending Subject: Attachments: Cayco Indemnification for 97-863.doc 47 Cayco lemnification for 97-Memvilication for 97-TP-027 I apologise for the delay in responding — but the year end, and holidays slowed the Attached is the indemnity that we will sign for the US borrows with JP Morgan Chase — you let me know if this is acceptable Please give me a call on Redected if you w to discuss Thanks MS-141 if you wish MS-141 — As we discussed, JPNorgan Chase's interpretation of the US securities lending regulations and Notice 97-66 (intended to solve the "cascading withholding tax" issue) is that some form of proof of withholding is required. Section 4 of Notice 97-66 clearly indicates that Morgan Stanley Cayman is a US withholding agent. JPMorgan Chase is a US person and clearly a withholding agent. If this is done with our Lux sub as agent, then the notice covers them as well. The language of this provision savs: > "If a U.S. withholding agent withholds the highest rate of tax > which would be imposed on all foreign recipients...each foreign > withholding agent will be treated as having satisfied its withholding > obligation under section 1.1441-7." For any new business, we are requesting a confirmation that appropriate tax has been withheld. The examples in Section 5 of Notice 97-65 all state that tax has actually been wittheld. In section 3, the language states that withholding may be reduced or eliminated...to the extent that the total U.S. tax actually withheld on the underlying dividend and any previous substitute payments is greater that the amount of U.S withholding that would be imposed... on the dividend. As such, again the ability to rely on the notice requires some showing of actual thholding. withholding. In light of all of this, I believe that we would need some form of letter from Morgan Stanley Cayman and possibly MSIL (I have insorted names but we would need the correct names of the companies involved) with language as follows: > "Morgan Stanley Cayman and MSIL confirm that appropriate U.S.
> taxes have been withheld. Morgan Stanley Cayman and MSIL further
> agree to indemnify and otherwise hold harmless JPNorgan Chase for (i) any U.S.
> withholding tax imposed on any substitute payment, and any interest or
> penalcy for failure to properly remit such tax, and [ii] JPNorgan
> Chase's payment of any taxes, interest and/or penalty otherwise due
> from, or paid on bahalf of, Morgan Stanley Cayman and MSIL.

MS-PSI* 020806

Permanent Subcommittee on Investigations
EXHIBIT #45 - FN 50

I think that this is not necessarily indicating that tax has been withheld on a payment but is instead saying that if tax should have been withheld, it was, If Morgan Stanley's interpretation that no further tax needs be withheld is correct, then the statement would be accurate.

I look forward to your comments. Please call me on Redacted if you wish to discuss further. I would also be pleased to discuss with your US tax personnel. I have dealt with a Mark Merlo in New York as part of an SIA committee but we have not discussed this subject.

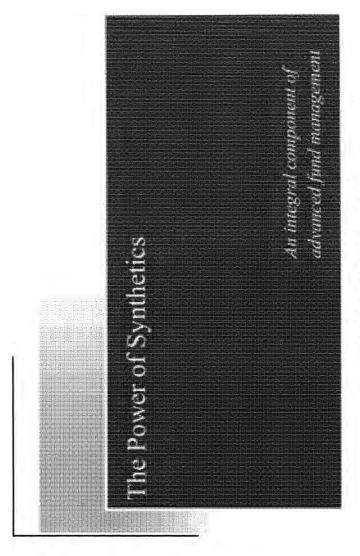
Regards

IP-027

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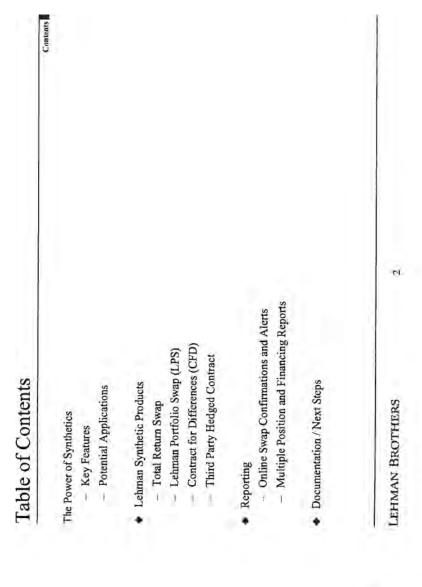
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EXHIBIT #45 - FN 63

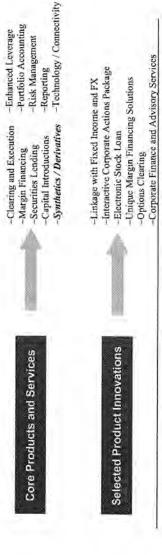




Global Prime Brokerage Lehman Brothers is pleased to present the capabilities, products and services provided by the Equity Finance group.

Executive Summary

- In today's presentation we will review;
- Lehman Brothers global synthetic products (key features & uses)
- Detailed review of each product, reporting and services provided by Lehman Brothers
- personalized basis combined with the range of execution, research and technology resources Lehman Brothers offers the full suite of finance products and services on an integrated and of a bulge-bracket global investment bank.



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Synthetics Features and Applications Key Features Potential Applications

Synthetics are structured products which transfer economic exposure of a security, basket or index without taking physical ownership or delivery.

The Power of Synthetics

The products have the following characteristics:

 Delta 1 : A \$1 movement in the underlying generates a \$1 movement in the synthetic equity component

Total Return: Economics will incorporate actions such as dividends, merger events, etc.

- Documentation:

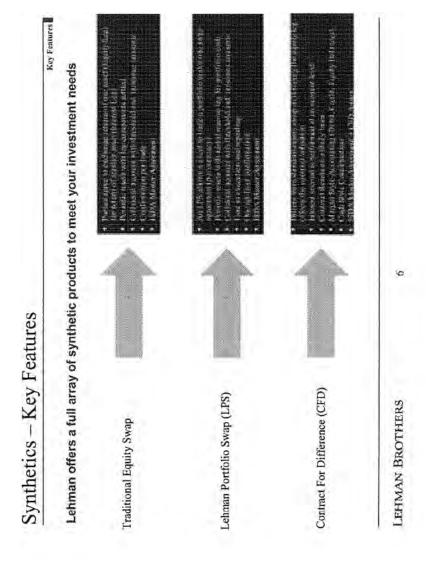
ISDA Master: International Swaps and Derivatives Association

CFD Annex under ISDA

"Lehman has provided excellent derivative support to our firm" Global Custodian Survey-2003

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Synthetics - Potential Applications

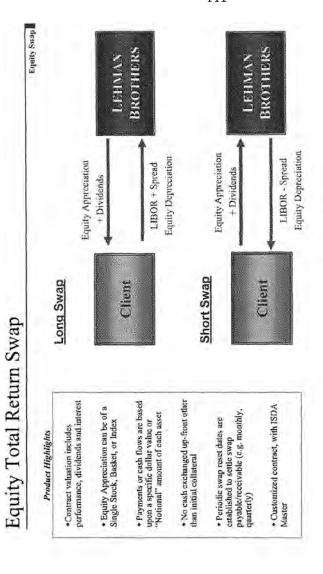
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 ◆ Leverage 	+	 Tax Management
- Return on Capital		- Loss Recognition
- Risk Based Margin		- Monetization
		 Long Term Capital Gain Achievement
		 Yield Enhancement
 Transaction Savings 		- UBTI
 Execution + Financing + Maintenance 		
- Stamp Tax	٠	Reporting Requirements
- Ticket Fees		 Balance sheet treatment
- Soft Dollar		- Anonymity
	•	Simplify Operational Management
 Market Access 		- Corporate Actions
- Ability to Short		- Settlements
- Local Status		
	•	Customized Contract
		- Maturity
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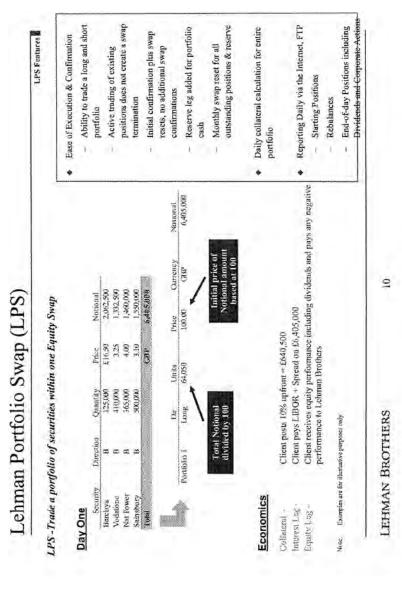
Lehman Synthetic Products
Equity Swap
Lehman Portfolio Swap (LPS)
Contract for Difference

441



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Lehman Portfolio Swap (LPS)

LPS -Trade a portfolio of securities within one Equity Swap

Day Two

New Position Detail

25,000 175,000 175,000 900,000

Scenary
Barelays
Vodalone
Nat Power
Hailiax
Dicous

Reserve Amounts for position closeout

New Portfolio Swap Summan

Additional Buys/Sells incorporated into Original Positions

LPS Features

Updated Units

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Vodufone	7	416,000	325		Vodalime	n	250,000	3,27	817,500	Voctatione	2	0000999	3.26	2,150,00
Nat Power	T	365,000	4.00		Nat Power	U.	(1753,000)	4.12	(721,000)	Nat Power	ed.	190,050	3.89	739,00
Samsbury	-	500,000	3.10	1,550,000					6	Samstiary	e-j	500,000	3.10	1,550,000
					Bullinx	13	440,000	6.30	2,772,000	Listifax	7	440,000	630	2,772,00
					Disons	13	500,000	2.95	1,475,000	Dixons	-1	500,000	2,95	1,475,06

Updated Swap

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LPS - Trade a portfolto o	form	Jance of	securit	ег жини оп	LPS-Trade a portfolio of securities within one Equity Swap Equity Performance	dı			
	P00000	New Parefron	910		Market Value	Value	Figure		
Security	Dir	Otto	Price	Notional	Price	Notional	Security	MTM	
Vodsfore	7	000,099	3.26	2,150,000	3.31	2,184,600	200	34,600	
Nat Power	-	190,000	3.80	739,000	3.96	752,400		13,400	
Sainsbury	-1	500,000	3.10	1,550,000	3.05	1,525,000		(25,000)	
Hallfex	2	440,000	6,30	2,772,000	6.25	2,750,000		(22,000)	
Chacins	7	900,008	2,95	1,475,000	3,10	1,550,000	Dixons	75,000	
Total				8,656,008		N.762,000		76,400	
Reserve	*	t =		8,611,909		7	Barclays	75,000	
Economics	(a)								
Collatoral				Increased to	£ 868,600 t	o maintain l	Increased to £ 868,600 to maintain 10% initial collateral level	lateral level	
faterest Lug			ì	Client Pays	Client Pays LIBOR + Spread on £ 8,686,000	read on £8,	000,989,		
Reserve				Swap maint	ains reserve	amount of £	Swap maintains reserve amount of £ 75,000 until next reset	ext reset	
Equity Leg MTM	MIN	need.	i	Current Vali	Current Value of Basket £ 8.762,000 gives per $(£76.000 \text{ Mark to Market} + £75.000 \text{ Reserve})$	£ 8,762,000	l gives perfon	Current Value of Basket £ 8.762,000 gives performance of £ 151,000 (£ 76,000 Mark to Market + £ 75,000 Reserve)	

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Key Features of Lehman Brothers CFD

- Lehman Brothers CFD Annex under ISDA Master Agreement establishes the account
- "Stand-alone" or integrated into Prime Broker account
- Terms and Conditions Rider (TCR) sets pre-agreed terms including:
- Financing rates on: debit balances, floating rate and spread for short CFD Transactions and free cash
- Short Spread Rate
- Margin requirements
- Dividend Passthrough
- Opinion from tax adviser on product integrity ("done-with" and "done-away")
- Underlying stock trades may be sourced from 3rd parties
- Available on most major markets
- · Supported by Prime Broker technology and reporting platform
- Prime Broker reporting and data extract suite
- All positions within account effectively cross-netted and cross-margined
- Capital efficiency by cross margining within Prime Broker account

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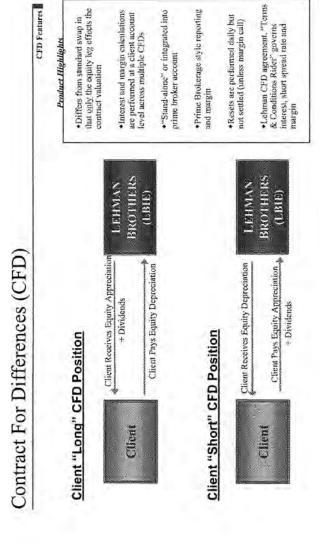
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Benefits of Lehman Brothers' CFD Program

- Orders handled by same "cash" sales/traders
- Choice of "stand-alone" CFD or combined with Prime Broker account
- Unique structure provides operational benefit;
- Daily accrual of Interest and Short Spread Rate at the account level across positions
- No operational resets with cash movements
- No margin calls unless account equity falls below minimum per TCR
- One way electronic confirmations via OASYS, fax, or email (no signature required)
- One aggregate position per underlying stock simplifies reconciliation
- Underlying stock tickers used on all confirms and reports (no bespoke identifiers)
- Access to LehmanLive "Account Query" and market leading Corporate Actions darabase

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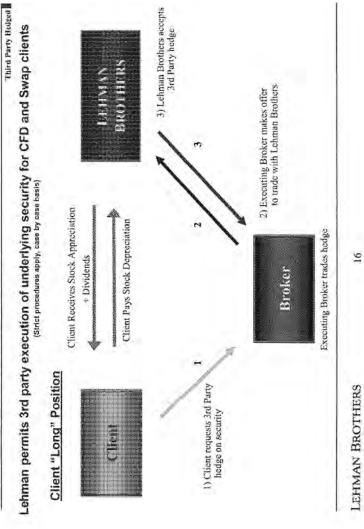
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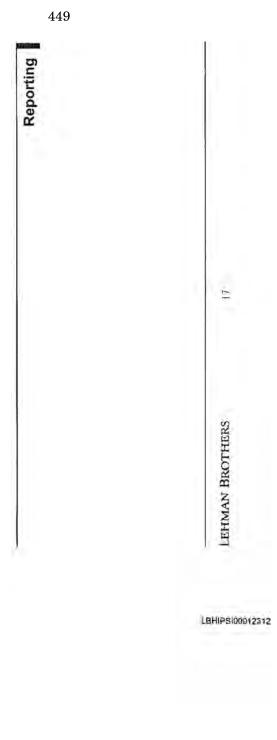


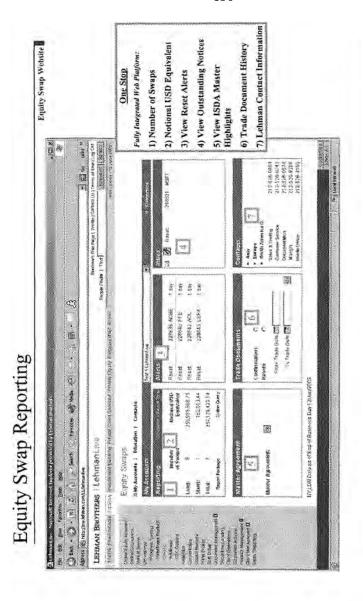
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Third Party Hedged Illustration

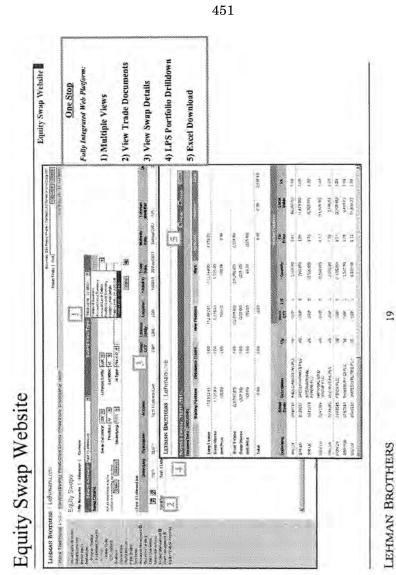




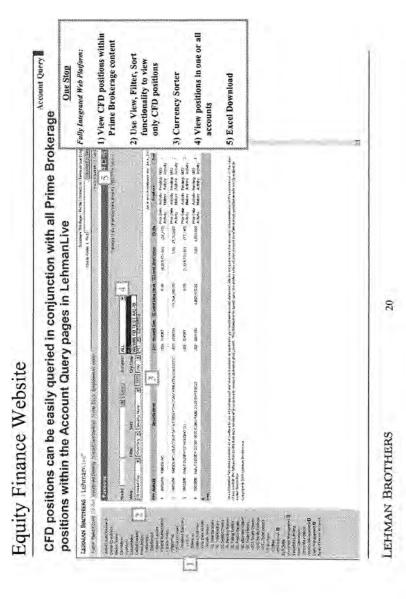


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Suite of reports for the CFD product including summary and detailed reports on trades, positions, margin and financing Reporting

CFD Reporting

- CFD positions are reported as any other Prime Brokerage position and are fully integrated with other custody and portfolio accounting reports
- Integrated reports for CFD and Prime Brokerage positions are available directly through LehmanLive
- Reports are available in several formats to suit individual client needs: pdf, csv file transfer and online through

the second section in the second

- CFD Report Offering LehmanLive
- Portfolio Summary
- Trade Date & Settlement Date Positions/Activity · Account Summary

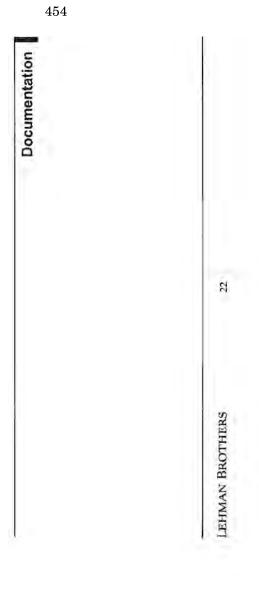
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- · TD/SD Positions-Summary
 - · TD/SD Positions- Detail
- · TD/SD Daily Activity- Summary · TD/SD Daily Activity-Detail
- Margin
- · Margin Requirements-Summary Financing
- MTD Interest- Detail
- · Margin Requirements- Detail

TO SHOW THE

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Documentation / Next Steps

Equity Swap 1804 Matter Agreement or Jone form confirm	
ISDA Macter Agreement or long form confirm	Documentation Package to Key Contacts
THE PARTY OF THE P	Credit and Risk Review
 U. K. Anti-Money Laundering Forms (LBIE) 	 Technology consultation
 Corporate / Partnership Documents 	
 Authorization Form (wire and money movements) 	
Contract for Difference	
ISDA Master Agreement	
◆ CFD Annex under ISDA	
 Terms and Conditions Rider "TCR" (Margin and Financing Terms) 	
 U. K. Anti-Money Laundering Forms 	
• Tax Forms	
 Authorization Form (wire and money movements) Optional Paperwork for both Swaps & 	
CFDs:	
 Prime Broker Agreement 	
 CPNA (Cross Product Netting Agreement) 	

Product Comparison

Case 1:18-md-02865-LAK

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Disclaimer

investors. In reaching a determination as to the appropriateness of any proposed transaction, clients should undertake a thorough independent review of the legal, regulatory, credit, tax, accounting and economic consequences of such This document is for informational purposes only and should not be regarded as an offer to sell or a solicitation of an offer to buy the products mentioned in it. This information has been obtained from various sources; we do not represent that it is complete or accurate and it should not be relied upon as such. Swaps are not appropriate for all transaction in relation to their particular circumstances. Lehman Brothers Inc. acts as agent for Lehman Brothers Finance S.A., and both are subsidiaries of Lehman Brothers Holdings Inc.

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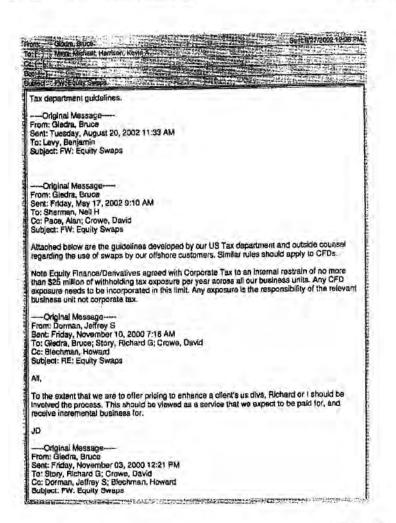
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Permanent Subcommittee on Investigations
EXHIBIT #45 - FN 65

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NO. 455 DB2



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88/88/2887 14:59

LEHMAN + 916457587448

NO. 455

PR3

Attached is the information you requested.

Based on the new withholding/information reporting rules that will take effect in January hedge funds have become very interested in the use of equity swaps. The tax department guidelines we have discussed in the past are set forth below. Note, we also do not want to both buy from and sell back to our customers the underlying securities.

CONTROL OF THE PROPERTY OF THE

-Original Message

Subject: RE: Equity Swaps

Howard, wanted to inform you that after internal discussions within the Tex department and with outside counsel, we are in agreement that equity swaps done in conjunction with Prime Broker accounts should be done within the proposed guidelines described below.

Ben

---Original Message-From: Gledra, Bruce From: Gledra, Bruce
Sent: Monday, May 15, 2000 3:02 PM
To: Levy, Benjamin; Monico, Joseph; Taranto, Anthony J
Co: Lauricella, Leonard J; Blechman, Howard; Crowe, David; Dorman, Jeffrey S
Subject: RE: Equity Swaps

The following are the proposed guidelines for equity swaps done in conjunction with Prime Broker accounts (per Howard Blechman and the Equity Derivatives group):

- 1) Duration of Swap Based on Number of Stocks in a Basket:
- a) 1-2 Stocks: 1 year term
- b) 3-5 Stocks : 6 month term
- o) 6-9 Stocks : 3 month term
- d) 10 or more Stocks : 45 day term
- 2) Early termination:

A penalty for early termination will be imposed. In no event will the Swap be terminated any period.

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3) Il possible the swaps will contain some non-dividend paying stocks.

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4) Creation of Basket of Stocks in the Swap:

 a) Limited legging will be allowed based on the duration and number of stocks in the basket as set forth below

i) 1-2 Stocks: 1 year term - Legging in not necessary

ii) 3-5 Stocks : 6 month term - Legging in allowed if accomplished within a 1 month period

iii) 6-9 Stocks : 3 month term - Legging in allowed if accomplished within a 3 week period

iv) 10 or more Stocks : 45 day term - Legging in not allowed

b) The client will be allowed to leg out of up to a maximum of 30% of the previous week's daily average volume of that stock (limit based on the market volume of that particular stock and not the amount of the

stock in the swap).

c) Other legging in and out possibilities will be determined on a case by case basis.

d) Mechanically transactions to change the basket will be completed as follows. Additions to the basket will be completed by crossing positions into the swap. Market on close trades will be used to take stocks

positions out of the swap (For exchanges that do not have market on close mechanisms in place other alternatives will be

5) Swap terms:

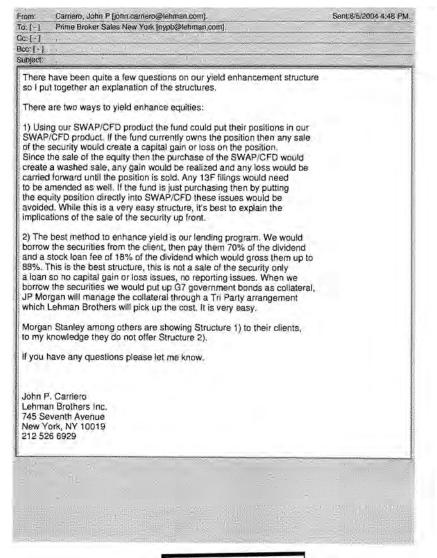
used).

The Swaps will utilize standard terms and documents. All Swap payments will be made on a net

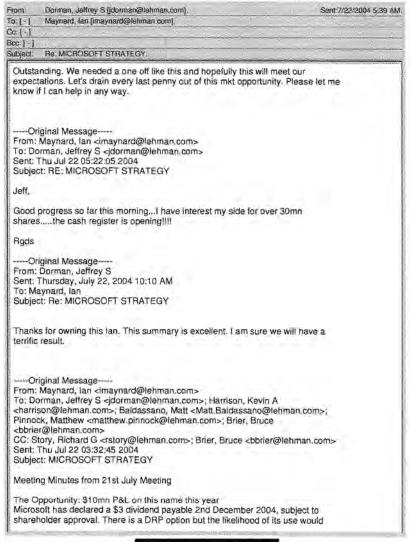
6) The Swap traders will provide on a quarterly basis summary details regarding the Swap

bankets.

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Permanent Subcommittee on Investigations **EXHIBIT #45 - FN 73**



Permanent Subcommittee on Investigation EXHIBIT #45 - FN 80

appear limited as i) there is no discount and ii) in order to partake the shareholder would need to withdraw their shareholding from DTC and hold in physical form under their own name. Lehman has sourced 10mn shares to date from offshore sources with the intention of using this asset to delta hedge third party swaps activity.

We are presently distributing to ING, Abbey National, Nomura out of Cayman, (for 70 underlying stock).

We are looking to sign up Fortis, Societe Generale and Barclays Capital out of Cayman

Our distribution lines out of LBF/LBIE for 85 underlying stock are significantly

Current market offer is 96.5%

We are presently 90 bid max for 70 underlying portfolios and 92.5 bid for 85 underlying portfolios.

Strategy

Distribution is the key axe. Proprietary should only be used as a no other option alternative. We need to source commitments on size and price from the swap counterparts (IM). KH to investigate distribution routes in the listed market and to coordinate feedback of bids on the OTC markets received by the swaps desk in NY to London.

BB can advise on structures that have been given the blessing of the tax department, should anyone need a refresh I urge you to speak directly to Bruce....anything away from these structures needs to pass Bruce for assessment and approval.

On the sourcing front we need to drive the axe with the various desks on the equity floor as well as investigate further sources of stock from our lending counterparties.

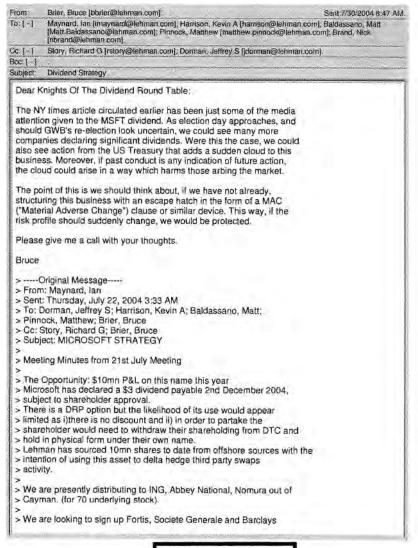
MP/IM to own the sourcing axe out of London.

MB to coordinate the axe with the hedge fund client base in coordination with BB IM to present strategy to sales desks (program/cash/derivatives) in London KH to present strategy to sales desks in NY.

FIRST Step is to assess the depth of our immediate market. Initial feedback required tomorrow prior to passing axe to the broader sales desks.

Will set up a meeting for this core group tomorrow to assess progress.

Rgds

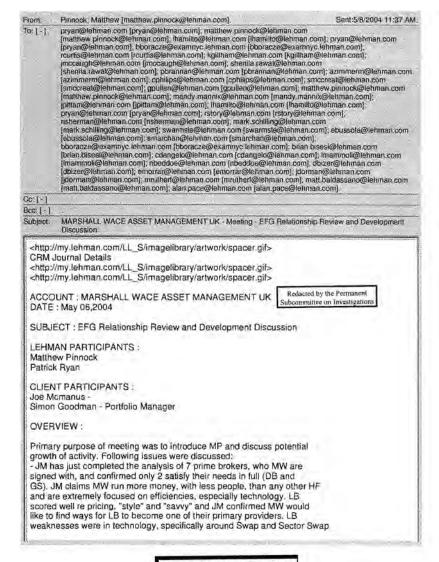


Permanent Subcommittee on Investigation EXHIBIT #45 - FN 84

```
> Capital out of Cayman
> Our distribution lines out of LBF/LBIE for 85 underlying stock are
> significantly broader.
> Current market offer is 96.5%
> We are presently 90 bid max for 70 underlying portfolios and 92.5 bid > for 85 underlying portfolios.
> Strategy
> Distribution is the key axe. Proprietary should only be used as a no

    other option alternative.
    We need to source commitments on size and price from the swap

> counterparts (IM).
> KH to investigate distribution routes in the listed market and to
> coordinate feedback of bids on the OTC markets received by the swaps
> desk in NY to London.
> BB can advise on structures that have been given the blessing of the 
> tax department, should anyone need a refresh I urge you to speak 
> directly to Bruce....anything away from these structures needs to pass
> Bruce for assessment and approval.
> On the sourcing front we need to drive the axe with the various desks
> on the equity floor as well as investigate further sources of stock
> from our lending counterparties.
> MP/IM to own the sourcing axe out of London.
> MB to coordinate the axe with the hedge fund client base in
> coordination with BB
> IM to present strategy to sales desks (program/cash/derivatives) in
> London
> KH to present strategy to sales desks in NY.
> FIRST Step is to assess the depth of our immediate market. Initial
> feedback required tomorrow prior to passing axe to the broader sales
> desks.
> Will set up a meeting for this core group tomorrow to assess progress.
> Rgds
```



Permanent Subcommittee on Investigations EXHIBIT #45 - FN 85

P&L reporting. This was reiterated by Magenta Pembrooke (who MW sought feedback from) who also had experienced teething problems with technology last year when transitioning.

- we explained the problems experienced were due to transacting via single stock swap product, rather than LPS or CFD offering. The LPS update is in testing and will fully cater for MW needs. JM confirmed it's unlikely they will award any business to LB until Oct 2005 earliest. We encouraged them to revisit this, as technology was viewed as strong plus point from other HF users of the LB products and the LPS update would demonstrate this. JM agreed to start the testing in the new LPS product when complete and then re-evaluate.
- re UK activity: MW expressed concern our CFD product looks like a cash product and therefore should attract stamp. This is due to the way LB post cash entries for CFD activity and we stressed this was not the case and was being widely used already. MW will always award CFD business with firm who executes for them.
- re borrow availability file: MW have experienced issues re cost of borrow when they have attempted to execute with LB and would like ability to execute based on information in file. We advised of recent clean up of availability feeds and JM confirmed this was an idustry wide problem though would review LB files again.

 - re put throughs: MW have negotiated zero put through chg with GS, where there is a major price difference on the GS quote to the price
- re US Business; currently small now though will dramatically increase during the summer of 2004. Interested in LB product, specifically around grossing up of dividends to 100%.
- re US Stat Arb: MW would like to send file with 500 names (for example) and LB submit one locater number for all loans effected. We confirmed it was not necessary to provide locater numbers in this way and would revert with full details.

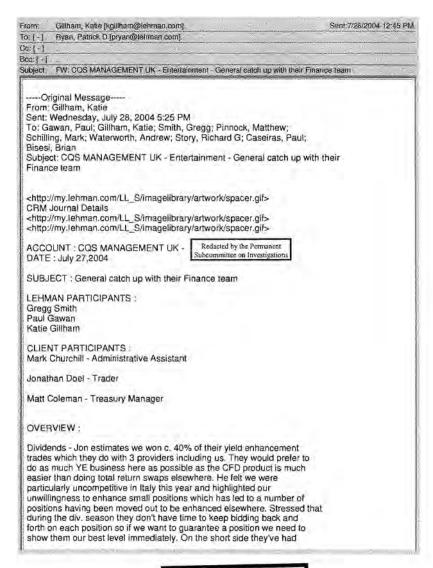
FOLLOW-UP:

- revert re LPS product when complete
- monitor availability file for completeness and accuracy
- revert re US Stat Arb and locater number
- follow up re US product and dividend gross up

Click here to view/edit journal

http://my.lehman.com/LCM/int/interaction/maintenance/maintenance/maintenance.jsp?do cGUID=0000014B057281129BA5A6A372313F3E&cid=FE477E5A7F8B11D494C40 0902792C

AC1&operation=updateInteraction&enot=Y>



Permanent Subcommittee on Investigations **EXHIBIT #45 - FN 87**

problems in that the improved dividend %'s have not fed through to the actual billing

They are still smarting over the margin issues that have been going on for nearly 2 months. Matt was particularly unhappy that he has had no update from risk since a meeting on 22nd June. They are now putting on all new split-capital trusts away from us and stressed that they are receiving what they consider to be fair margin treatment.

Cross-selling - very happy with current repo business, would like to do more if we had bigger balance sheet, mainly doing biz with Citibank.

Mentioned that we are expensive on JPY special borrows but that their JPY CB traders are exceptionally aggressive on borrow fees.

FOLLOW-UP:

Dividends - aim to pre-agree levels on all of their potential YE names prior to dividend season (as we did in 2002) potentially the best way to guarantee this business and also save us and them time bidding on each and every position.

Going forward all short YE trades will be booked at 85 underlying and an all-in fee rather than at a 0 fee with an all-in div as this is not the only client to have encountered this problem.

Margin - Have spoken to Matt Bowen who is handling this matter responses have been delayed by vacation schedules on both sides.

Cross selling - Matt Coleman will work with me to make sure our x-selling initiative form is completely up-to-date - meeting TBA.

OUTCOME :

CQS continue to regard us as one of their top three providers, important to keep their attention focused on the excellent service we provide for them despite the recent margin issues.

<http://my.lehman.com/LCM/int/interaction/maintenance/maintenance.jsp?docGUID=00000056498C81139AA7A6A372313F3E&cid=8024AC2D801C11D494C60</p> 0902792C

AC1&operation=updateInteraction&enot=Y> Click here to view/edit journal

rom:	Brier, Eruce [bbrier@lehman.com]	Sent 1/21/2005 8:48 AM
p:[-]	Story, Richard G [rstory@lehman.com], Sugarman, Peter [psugarma@lehr	the state of the s
:[-]	Harrison, Kevin A [harrison@lehman.com], Maynard, lan [imaynard@lehm	an com].
x:[-]		and the second second
ibject:	RE: US Total Return Equity Swaps for Fortress Off-Shore Fund.	
Rich/P	eter	
	to reach you by phone but your asst. mentioned you were on the with your bookies.	9
priorie	Will your bookles.	
This w	ould be best as a phone call but let me take a shot.	
Attome	y Client Privilege	
	,	
		1
While	single equity swaps do occur in the market most US tax lawyers	
	say such swaps warrant elevated attention for a few reasons.	
	he relevant regulations do not comport particularly well with	
the sin	igle equity model. Second, many finance and legal professionals	
	dustry believe a single equity swap can be equated to a securitie	
	f this were the case, US withholding would likely be imposed on	
swap p	payments made from LBIE to hedge funds.	
Attorne	ey Client Privilege	
lan Mi	ick, and I have formulated guidelines for the yield enhancement	
	SS. Attorney Client Privilege	
	y Client	
Drivilor		
Му ѕи	ggestion is to work with the client and suggest either a Cayco	
	loan or a CFD. Both in my opinion carry a lower level of tax risk agard to single equities.	

Attorney	y Client Privilege	
		1
Ori	iginal Message	

Permanent Subcommittee on Investigations
EXHIBIT #45 - FN 88

From: Story, Richard G Sent: Friday, January 21, 2005 8:10 AM To: Sugarman, Peter; Brier, Bruce Subject: US Total Return Equity Swaps for Fortress Off-Shore Fund	
Attomey Client Privilege	
Original Message From: Wickham, John Sent: Thursday, January 20, 2005 2:04 PM To: Story, Richard G; Sugarman, Peter; Coghlan, John; Wecker, Jeff;	
Harrison, Kevin A; Vinciguerra, Marlisa Subject: FW: Total Return Equity Swaps for Fortress Off-Shore Fund	
This is the topic of tomorrow's call at 10:30.	
The relevant positions are: 89,353 shares of Apollo Investment Corp (AINV) 127,500 shares of NorthStar Reality Finance Corp (NRF) 35,000 shares of Bay View Capital corp (BVC)	
Original Message From: Wait, Jarett Sent: Wednesday, January 19, 2005 4:11 PM To: Wickham, John; Seymour, Jeffrey Subject: RE: Total Return Equity Swaps for Fortress Off-Shore Fund	
thanksOriginal Message From: Wickham, John Sent: Wednesday, January 19, 2005 2:59 PM	
To: Seymour, Jeffrey	

Cc: Wait, Jarett

Subject: Re: Total Return Equity Swaps for Fortress Off-Shore Fund

I will take a look into it and come back to you.

Sent from my Comstar Wireless Handheld (www.Comstarinteractive.com)

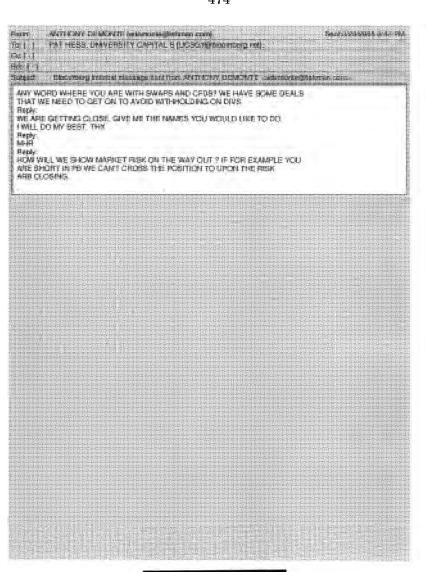
----Original Message---From: Seymour, Jeffrey <jseymour@lehman.com>
To: Wickham, John <jwickham@lehman.com>
CC: Wait, Jarett <jwait@lehman.com>
Sent: Wed Jan 19 14:06:43 2005
Subject: Total Return Equity Swaps for Fortress Off-Shore Fund

Jarett Wait suggested I touch base with you on a total return swap opprotunity we just received from Fortress Investments.

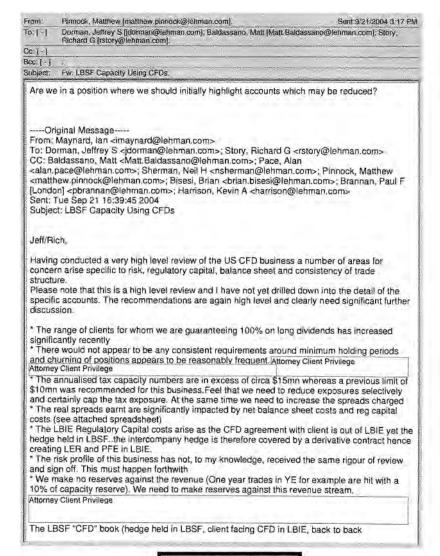
Fortress owns 3 dividend paying equities in their off-shore fund (Drawbridge Special Opportunities Fund, Ltd.) The dividends are subject to 30% tax witholding since the stocks are held in an off-shore fund. Fortress would like to do total return equity swaps on the three position to mitigate/eliminate the tax witholding.

I spoke to Mike Meys in Equities / Customer Financing and he said that we were very familiar with these types of tax-driven transactions with off-shore parties but we did not do them ourselves because of concerns we have over their effectiveness. Mike suggested there might be a structured solution with a larger number of positions in a trust, but Fortress prefers the simplicity of a simple total return swap.

Is there any other area at Lehman I should discuss this potential trade



Permanent Subcommittee on Investigations EXHIBIT #45 - FN 94



Permanent Subcommittee on Investigation EXHIBIT #45 - FN 97

intercompany hedge) presently has the following US positions there within: On all these positions we are paying 100% on longs and receiving 100% on shorts

\$mn Bo

Counterparty 56 range Long CFD Notional Short CFD Notional Long Spread Liberty View 5600337 1.5 0 40 University Capital 5600362 20.5 0 50

Highbridge 5600389 2 0 30 CQS 5600453 306 53 30 University Capital 5600564 3 0 50 University Capital 5600568 6.5 0 50 Liberty View 5600588 1 0 40

CFM 5600646 180 178 31 CFM 5600649 6 16 28 Angelo Gordon 5600705 1,010 0 40 Angelo Gordon 5600706 3 0 40

CQS 5600709 3 0 50

Suttonbrook 5600765 186 0 35

Millenium 5600931 6 0 30

UBS 0'Connor 5604008 1,5 0 30 Gruss 5604012 9 2 40 Gruss 5604013 11 3 40

KBC 5605002 21 14 25

KBC 5605003 53 32 25

KBC 5605004 12 9 25

KBC 5605005 117 74 25

Polygon 5605030 0 46 30 Vegaplus 5605120 13 16 40 PHZ Capital 5605121 315 344 35

Citadel 5605155 121 0 30

Perry 5606145 1 0 0

Of the material Long Positions

Client 56 range Long Notional 30% Capacity Utilised (assuming 2% yield)

CQS 5600453 306mn 1,836,000 CFM 5600646 180mn 1,080,000 Angelo Gordon 5600705 1010mn 6,060,000

Suttonbrook 5600765 186mn 1,116,000

KBC 5605002 to 5005 203mn 1,218,000

PHZ Capital 5605121 315mn 1,890,000

Citadel 5605155 121mn 726,000 Other 88mn 528,000

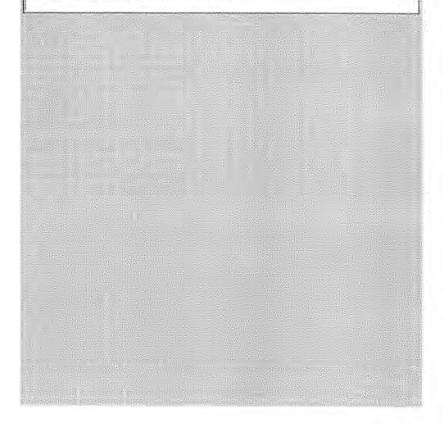
Total 14.45mn

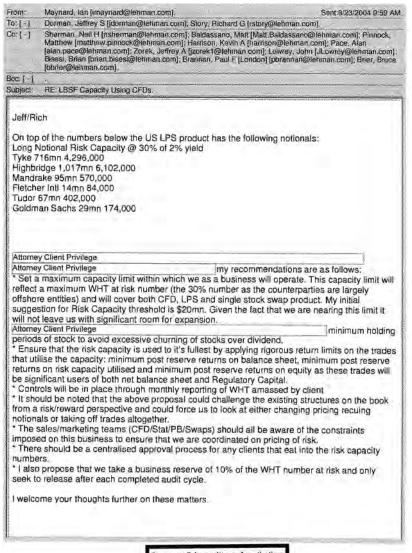
Whilst we have re-positioned the yield enhancement business to avoid using proprietary capacity

on the US trade we are running the risk of increasing the risk exposure whilst at the same time increasing net balance sheet and regulatory capital as the long stock hedge is back to backed with the CFD position in LBIE (hence creating PB Counterparty Risk Requirement issues, Potential Future Exposure Issues and Large Exposure Requirement Issues)

I attach a relatively naïve and bullish P&L estimate (makes the assumption that we earn full spread on the long hedge). This makes the assumption that there is no material churning of the position (which in many instances does not match the actual the trading pattern). I have not reviewed holding periods for each of the above clients.

<<LBSF CFD Revenue Analysis(Best Case).xls>>





Permanent Subcommittee on Investigation **EXHIBIT #45 - FN 98**

Rgds

- > Jeff/Rich.
- > Having conducted a very high level review of the US CFD business a number of areas for concern arise specific to risk, regulatory capital, balance sheet and consistency of trade
- > Please note that this is a high level review and I have not yet drilled down into the detail of the specific accounts. The recommendations are again high level and clearly need significant further
- > * The range of clients for whom we are guaranteeing 100% on long dividends has increased
- significantly recently > * There would not appear to be any consistent requirements around minimum holding periods and churning of positions appears to be reasonably frequent. Attorney Client Privilege
 Attorney Client Privilege
- > * The annualised tax capacity numbers are in excess of circa \$15mn whereas a previous limit of \$10mn was recommended for this business. Feel that we need to reduce exposures selectively and certainly cap the tax exposure. At the same time we need to increase the spreads charged
- > * The real spreads earnt are significantly impacted by net balance sheet costs and reg capital
- costs (see attached spreadsheet)

 > * The LBIE Regulatory Capital costs arise as the CFD agreement with client is out of LBIE yet
 the hedge held in LBSF..the intercompany hedge is therefore covered by a derivative contract hence creating LER and PFE in LBIE.
- > * The risk profile of this business has not, to my knowledge, received the same rigour of review and sign off. This must happen forthwith
- > * > We make no reserves against the revenue (One year trades in YE for example are hit with a 10% of capacity reserve). We need to make reserves against this revenue stream.
- > The LBSF "CFD" book (hedge held in LBSF, client facing CFD in LBIE, back to back intercompany hedge) presently has the following US positions there within: > On all these positions we are paying 100% on longs and receiving 100% on shorts

- > Counterparty 56 range Long CFD Notional Short CFD Notional Long Spread > Liberty View 5600337 1.5 0 40
- > University Capital 5600362 20.5 0 50
- > Highbridge 5600389 2 0 30
- > CQS 5600453 306 53 30
- > University Capital 5600564 3 0 50
- > University Capital 5600568 6.5 0 50 > Liberty View 5600588 1 0 40 > CFM 5600646 180 178 31
- > CFM 5600649 6 16 28
- > Angelo Gordon 5600705 1,010 0 40
- > Angelo Gordon 5600706 3 0 40 > CQS 5600709 3 0 50
- > Suttonbrook 5600765 186 0 35

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> Millenium 5600931 6 0 30
> UBS o'Connor 5604008 1.5 0 30
> Gruss 5604012 9 2 40
> Gruss 5604013 11 3 40
> KBC 5605002 21 14 25

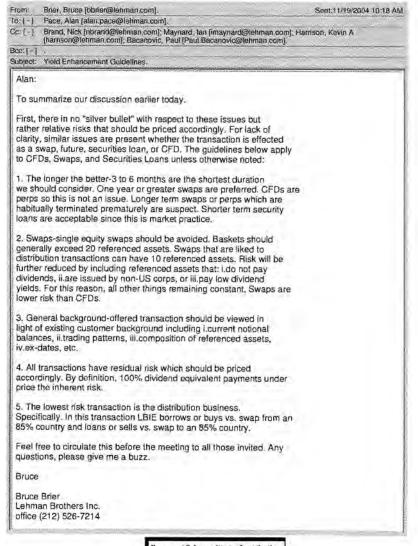
> KBC 5605003 53 32 25

> KBC 5605004 12 9 25

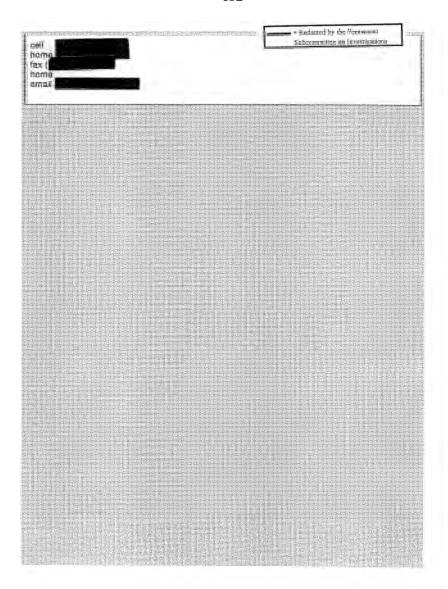
> KBC 5605005 117 74 25
> Polygon 5605030 0 46 30
> Vegaplus 5605120 13 16 40
> PHZ Capital 5605121 315 344 35
> Citadel 5605155 121 0 30
> Perry 5606145 1 0 0
> Of the material Long Positions

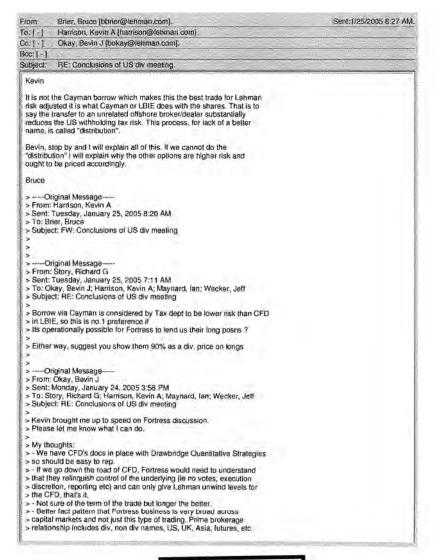
    Client 56 range Long Notional 30% Capacity Utilised (assuming 2% yield)
    CQS 5600453 306mn 1,836,000
    CFM 5600646 180mn 1,080,000
    Angelo Gordon 5600705 1010mn 6,060,000

> Suttonbrook 5600765 186mn 1,116,000
> KBC 5605002 to 5005 203mn 1,218,000
> PHZ Capital 5605121 315mn 1,890,000
> Citadel 5605155 121mn 726,000
> Other 88mn 528,000
> Total 14.45mn
> Whilst we have re-positioned the yield enhancement business to avoid using proprietary capacity on the US trade we are running the risk of increasing the risk exposure whilst at the same time increasing net balance sheet and regulatory capital as the long stock hedge is back to backed with the CFD position in LBIE (hence creating PB Counterparty Risk Requirement issues,
Potential Future Exposure Issues and Large Exposure Requirement Issues)
> I attach a relatively naïve and bullish P&L estimate (makes the assumption that we earn full spread on the long hedge). This makes the assumption that there is no material churning of the
position (which in many instances does not match the actual the trading pattern). I have not
reviewed holding periods for each of the above clients.
> << File: LBSF CFD Revenue Analysis(Best Case).xls >>
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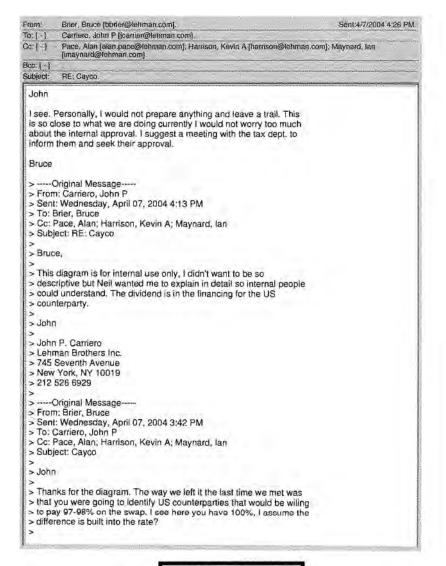


Permanent Subcommittee on Investigations EXHIBIT #45 - FN 99



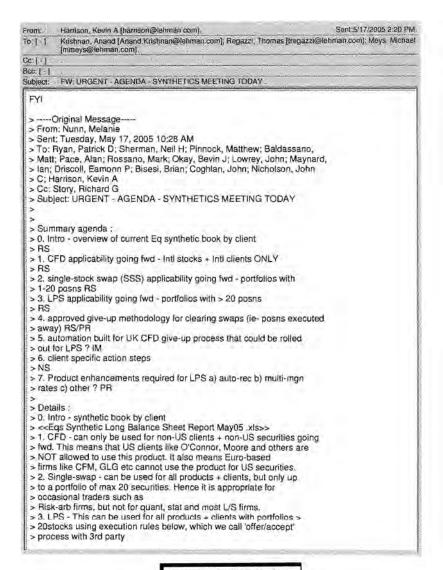


Permanent Subcommittee on Investigations EXHIBIT #45 - FN 103

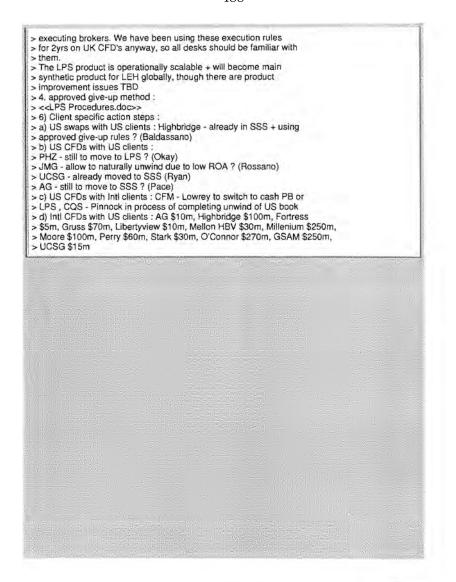


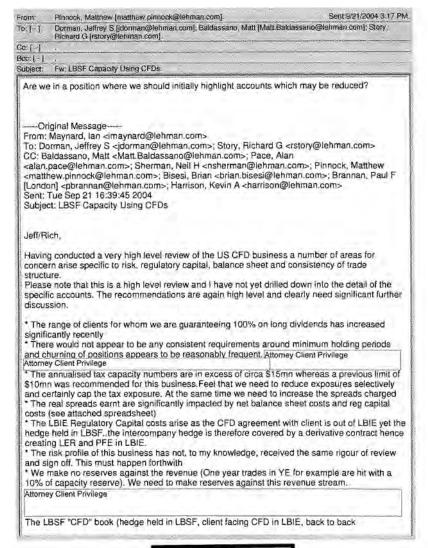
Permanent Subcommittee on Investigation **EXHIBIT #45 - FN 105**

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> Is this diagram prepared for the US counterparty?
> I would suggest a bit more discretion (ie, less reference to tax
> treaties) and, if this is for the unrelated US buyer, less detail of
> flows prior to the swap/sale.
> Bruce
> ----Original Message----
> From: Carriero, John P
> Sent: Wednesday, April 07, 2004 11:25 AM
 > To: Brier, Bruce
> Cc: Pace, Alan; Harrison, Kevin A
 > Subject:
> Bruce,
> Please review this trade and let me know how you want to proceed. I
 > have a couple of counterparties that I've traded with in the past and
> I'll be speaking with to see if they have an interest in trading with
> us on the dividend side. This trade is initially being set up for
> Maverick but is offered by our competitors as part of a total
> financing relationship with hedge funds. Take a look at this and let
> me know any questions that you have, then let's set up a little time
 > in the next day or so to go through all the issues that we've been
 > discussing.
 > John << File: Caymans Island Trade.ppt >>
 > John P. Carriero
 > Lehman Brothers Inc.
> 745 Seventh Avenue
> New York, NY 10019
 > 212 526 6929
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Permanent Subcommittee on Investigations **EXHIBIT #45 - FN 108**





Permanent Subcommittee on Investigation EXHIBIT #45 - FN 109

intercompany hedge) presently has the following US positions there within: On all these positions we are paying 100% on longs and receiving 100% on shorts

CQS 5600453 306 53 30 University Capital 5600564 3 0 50 University Capital 5600568 6.5 0 50 Liberty View 5600588 1 0 40 CFM 5600646 180 178 31 CFM 5600649 6 16 28 Angelo Gordon 5600705 1,010 0 40 Angelo Gordon 5600706 3 0 40 CQS 5600709 3 0 50 Suttonbrook 5600765 186 0 35

Millenium 5600931 6 0 30 UBS o'Connor 5604008 1.5 0 30 Gruss 5604012 9 2 40 Gruss 5604013 11 3 40 KBC 5605002 21 14 25 KBC 5605003 53 32 25 KBC 5605004 12 9 25 KBC 5605005 117 74 25 Polygon 5605030 0 46 30

Vegaplus 5605120 13 16 40 PHZ Capital 5605121 315 344 35 Citadel 5605155 121 0 30 Perry 5606145 1 0 0

Of the material Long Positions

Client 56 range Long Notional 30% Capacity Utilised (assuming 2% yield) CQS 5600453 306mn 1,836,000 CFM 5600646 180mn 1,080,000 Angelo Gordon 5600705 1010mn 6,060,000 Suttonbrook 5600765 186mn 1,116,000 KBC 5605002 to 5005 203mn 1,218,000 PHZ Capital 5605121 315mn 1,890,000 Citadel 5605155 121mn 726,000 Other 88mn 528,000

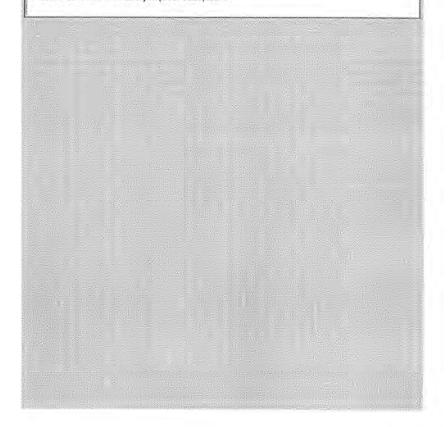
Total 14,45mn

Whilst we have re-positioned the yield enhancement business to avoid using proprietary capacity

on the US trade we are running the risk of increasing the risk exposure whilst at the same time increasing net balance sheet and regulatory capital as the long stock hedge is back to backed with the CFD position in LBIE (hence creating PB Counterparty Risk Requirement issues, Potential Future Exposure Issues and Large Exposure Requirement Issues)

I attach a relatively naïve and bullish P&L estimate (makes the assumption that we earn full spread on the long hedge). This makes the assumption that there is no material churning of the position (which in many instances does not match the actual the trading pattern). I have not reviewed holding periods for each of the above clients.

<<LBSF CFD Revenue Analysis(Best Case).xls>>



we was see to the to species total there.

TU 922071823110

P-12/13

US Equity Landing Annex

This Armer is dated 8 July, 2004 and is between Galdman Sache Europe eating in its capacity as agent for the disclosed Principals Identified in the Agreement ("Agent") and Colman Brothers Chully Finance (Captrain) Limited ("Bantesear") and assends, supplements and forms pair of the Overseas Securities London Agreement, between the parties dated 15 October, 2003, (ma Nametersear)

(A) Application

This parties hereby agree that the Armer applics to all leans of Spourities under the Agreement when the Securities tent to Bertwer set US Equity Securities (sect such lean a "US Lear"), for this purpose "US Equity Securities" means capity describes and or instruments leased by an entity resident, incorporated or otherwise organized in the USA.

(B) Representations, Asimowledgements, Undertakings and Indomnities of Borrower

In relation to substitute paywards paid by the Bozrower to the Principale, in Issu of US dividence on US Equity Securities pursuant to Clause 4(8) of the Agreement ("Bubertistic Psymenter"), the Bozrower makes the following representations, acknowledgements and undertakings to and for the benefit of Agent and each Principal:

- Bartower hereby represents and warrants on a continuing basis to agent and each Principal that Garrower is not resident in the United Status of America and is not a US person for the purposes of the US Internal Revenue Code.
- 2. Borrower hereby undertakes to Agent and Each Principal and agrees (c. (i) if applicable, withhold US tax on Substitute Payments made to each Principal (ii) file an (its Form 104-8 or such other form, it required, to report Substitute Payments transferred or paid to any Principal (or such Principal's aggress) for the Principal's account; and (iii) to retain copies of the Forms 1042-S (if any) for st least seven years effect the date of filing.
- Borrower extensivistiges that Agent and each Principal (and their agents) are relying on the Borrower to ensure estisfaction of US tax withholding and reporting on the Substitute Psyments, if any.
- 4. Borrower tieraby agrees to cooperate with Agent and each Principal (and their agents) in the overs of any United States Internal Revenue Service (TRET) incluties and excits of Agent or a Principal (and/or their agents) role in these transactions. Intelliging, without limitation, Economic Voltage provide the Forms 1045-28 is held, if required, or such other form as the Sortemes may file, on the transactions and confirm that the reported has withholding, if any, was deposited with the IRS.
- 5. The Borrows hareby acknowledges and understands that each Apert and each Principal (and it's agents) may have a US few return (ling obligation and tax isotility in the seets that it receives Substitute Payments and the fex fability with respect thereby has not been fully adderse. The Borrower hereby agrees to hold hurriess and butominity Agent and each Principal (and their agents) squared at ections, proceedings, claims, costs, demande and expenses arising these tronged which may be bought against, suffered or incurred by Agent and or each Principal (and their agents) in the event of (i) breach by Borrower of any of the representations, marraintee or undertailings set six above in relation to Statisticals.

GS-PSI-00427

Confidential Proprietary Business Information The Goldman Sachs Group, Inc. Produced Pursuant to Senate Rule XXVI(5)(b)(5)

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Permanent Subcommittee on Investigations
EXHIBIT #45 - FN 111

TU 982971823110 P.13/13

- agant provides written notice to Birmower within 90 days of receipt of any dainn for U.S. withholding takes by a U.S. governmental egency;
- Through the date that is 10 days after Screwer has received the appropriate notice, or so long as Borrower has assumed the deferme of the claim as provided for insmediately above, Apert shall not (i) pay the claim, or (ii) consent to any settlement or other approximation with respect to the claim without the prior without concern of Sorrower, and

Borrower shall not be obligated to Indemaily and hold harmless Agent and Principal (and agents of Principal) in respect of such withholding tits, other tisses, interest and/or penalties to the extent that the obligation aross due to the registerics or lad faith of the Agent of Principal (or agents of Principal), as the case may be.

(0)

- All capitalized terms used herein and not otherwise defined shall bear the observing excellent to them, in the Agreement
- in the event of any conflict between the terms of this Armes and the Agreement, the terms of this Armes will provide

This Arriver will be governed by and construed in accordance with English law.

IN WITHCHES WHEREOF, this Almen has been associated on behalf of the parties herero on the data fact before william.

For and on bonds of

a Equity Pineress (Coymon) United

GS-PSI-00428

Confidential Proprietary Business Intermetion The Goldman Sachs Group, Inc. Produced Pursuant to Sensite Rule XXV(5)(b)(5)

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PAGE 62/62

CHESTONS NAMES. BORTON GLOBAL ADVISOR

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Document 808-17

INFORMATION DOCUMENT REQUEST RESPONSE TO: INTERNAL REVENUE AGENT FROM: BOB KUNZ, LEHMAN TAX DEPARTMENT Reducted by the Permanent Subcommittee on Investigation SUBJECT: RESPONSE TO IDR 1E-52 DATE: October 17, 2007

In response to information document request IDR IE-52 (dated August 27, 2007), Lehman is providing the following responses:

Request: This request is the second follow, issued on the date shown below, to your response to IDRs IE 9 issued on 2/27/2007 and IE 17 & IE 19 issued on 3/13/2007.

- 1. Request: In order to determine that the documentation submitted on 6/8/07 and 7/1 3/07 with respect to the Single Equity Swap (SES) and the Lehman Performance Swap (LPS) is relevant and responsive to the above referenced IDRs, please confirm in writing and/or submit the following:
 - Request: Your understanding of the criteria for the transactions responsive to IDRs IE-9, IE-17, and IE-19 based on the oral agreement you cited in the June 8, July 13, and August 14 cover letters from Bob Kunz to

Answer: Lehman's understanding of the criteria for the transactions responsive to IDRs IE-9, IE-17, IE-19 based on the oral agreement you cited in the June 8, July 13, and August 14 cover letters from Bob Kunz to was covered in the letter to and dated August 27, 2007. As noted in that letter, Lehman was covered in the letter to understood transactions to be responsive if they met the following four criteria:

- A U.S. Lehman entity (Lehman U.S.) acquired (as defined in IDR IE-19) a U.S. equity directly or indirectly from a foreign person (Foreign Counterparty) with settlement occurring as early as seven days before the dividend declaration date for the U.S. equity and no later than the U.S. equity's dividend record date;
- 2. The same Foreign Counterparty and a Lehman entity (domestic or foreign) entered into a "financial instrument" (as defined in IDR IE-9) with respect to the same U.S. equity;
- 3. Lehman U.S. held the U.S. equity over the dividend record date and received 100% of the dividend from the issuer, or did not hold the U.S. equity but received a substitute dividend payment determined with respect to dividends on such equity because Lehman U.S. transferred the U.S. equity to another U.S. institution pursuant to a stock lending agreement; and

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Reducted by the Permanent Subcommittee on Investigation

After the dividend record date, the U.S. equity was directly or indirectly sold to the Foreign Counterparty by Lehman U.S.

In addition to these criteria, Lehman understands that the information requested in the IDRs generally relates to U.S. withholding taxes potentially applicable to U.S. source dividends paid to non-U.S. residents.

Finally, as we have noted, the Lehman Performance Swap (LPS) is also known as the Lehman Portfolio Swap.

Request: Your understanding is that a transaction is deemed responsive, for purposes of IDR IE-9, when stocks were purchased from and sold by the taxpayer to the same counterparty, directly or indirectly through mechanisms such as other brokers, market on close orders and volume-weighed average price arrangements, and that such stock purchases made by the taxpayer or any affiliate included those purchases made through security lending agreements as well as outright purchases and sales. If that is not your understanding, please clarify in writing.

Answer: The parties discussed this request and the definition of the term "indirectly" during a conference call on Tuesday, October 16. As agreed during that call, Lehman has sent you suggested changes to that language in separate correspondence on October

Request: Your understanding is that a potential dividend is deemed to apply when a swap is terminated within a 45 day period, with offset by another instrument or transaction qualifying as a termination for this purpose. If that is not your understanding, please clarify in writing.

Answer: As we noted in the October 2nd letter to informed Lehman previously that the IRS has decided to retract this request. Therefore, Lehman will not respond to this request.

2. Request: Please provide a detailed description of the criteria utilized to identify the e-mails, power point presentations, and transactions deemed responsive. In addition, provide a list of all the relevant search terms used for identifying the e-mails produced so far and future ones that you might consider responsive.

Answer: Lehman identified responsive transactions through a combination of the review of documents and email and discussions with knowledgeable Lehman employees. Lehman utilized the criteria specified in IDR IE-9 and later modified in the discussions between the IRS and Lehman. Lehman used the following search terms in email searches of the relevant employees to identify potentially responsive documents:

"Lehman performance swap"

"LPS"

2

"portfolio swap"
"portfolio index" "single equity swap"
"SES" "contract for differences"
"CFD" "hedge swap"
"internal swap"
"total return swap" "Cayco" "stock loan"
"stock lending" "box trade" "distribution trade" "97-66" "Notice 97-66" "distribution model" "yield enhancement" "yield enhancement"

"yield enhancement strategy"

"yield enhancement strategies"

"dividend arbitrage"

"tax efficiency strategy"

"tax efficiency strategies" "tax avoidance strategy" "tax avoidance strategies"



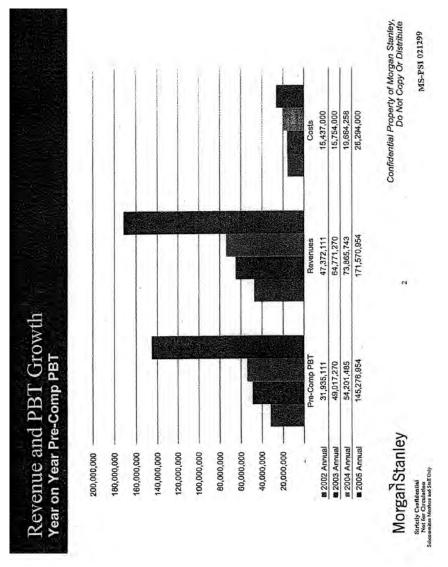
Presentation to Global Financing Products Group
U.S. Equity Swaps Flow Business
September 6, 2005

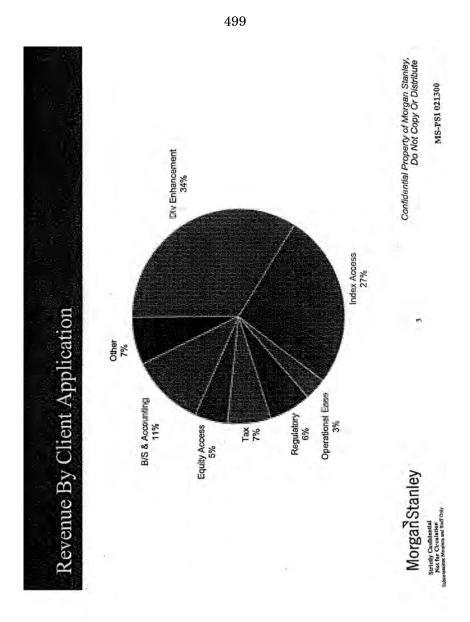
Morgan Stanley institutional Equity
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MS-PSI 021298

Permanent Subcommittee on Investigation
EXHIBIT #45 - FN 122







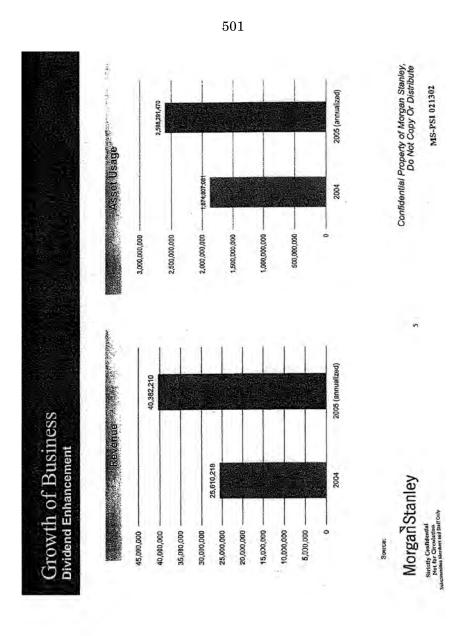
Components of the Business

- Dividend Enhancement Swaps
- Largely commoditized pricing among the US hedge fund community
- Financing set to match PB debit rates
- Commission schedules match single name cash execution levels
- Special Situations
- Dividend enhancement
- Withholding treatment on the cash distributions
 - Capital gains treatment

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MS-PSI 021301

MorganStanley



Fundamental Shifts in the Business

- Revenue increase due to maturation of new 2004 clients
- · New and more conservative tax policy
- 58% Increase in trading revenue and 39% increase in asset usage
- Unique positioning to take advantage of the new landscape

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MS-PSI 021303

Morgan Stanley

Scaling the Business

Initiatives this year

- Training the cash sales-trading force

Direct Market Access (DMA)

 Technology development required - Passport for swaps functionality

- Swap destination in OMW

- Automated swap booking from OMW

Further marketing initiatives

- Information flow to sales force to help them identify opportunities

Marketing overseas

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MS-PSI 021304

MorganStanley

Business Constraints

Pricing

 PB is getting consistently more aggressive than we can be to continue meeting ROE objectives

Funding/Balance Sheet

- Funding costs remain high, but improving

- Access to balance sheet has been good, but for how long?

- Credit capacity with balance sheet counterparties

Tax Policy

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MS-PSI 021305

Morgan Stanley

Swap Inventory: Proprietary overlay

- Use a proprietary trading strategy as an overlay to our inventory to identify opportunities to remain unhedged
- · Strategy must be flexible enough to be tailored to our inventory
- Objectives
- Improve tax and regulatory analysis
- Generate alpha
- Take advantage of opportunity to invert funding cost
- Take advantage of opportunity to source "hot" borrow
 - Reduce balance sheet

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MS-PSI 021306

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Target FY 2006 Goals

- Arm the sales force

Marketing

Marketing overseas

Technology

- Build further scalability into the flow business

Balance Sheet

Push for a more aggressive credit analysis with B/D counterparties given the low risk nature of our trades

Implement proprietary overlay to swap inventory

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MS-PSI 021307

MorganStanley

07

REDACTED



From: Loshiavo, Richard (EPS)
Sent: 18 June 2001 13:59
To: Chackmen, Sylvan (IED)
Cc: McDougall, Ross (IED)
Subject: [Fwd: [Fwd: [Fwd: [Trading Idea: Dividend Yield Enhancement Swap for US Stock]]]

Svl/Ross.

Do you guys presently provide div enhancement trades on $\ensuremath{\mathtt{U}}.\ensuremath{\mathtt{S}}$ stocks for any PWH accounts?

Subject: [Fwd: [Fwd: [Trading Idea: Dividend Yield Enhancement Swap for US Stock]]]
Date: Thu, 14 Jun 2001 14:46:49 -0400
From: Martin Tell <Martin.Tell@morganstanley.com>
Reply-To: Martin.Tell@morganstanley.com>
Organization: Morgan Stanley
To: "West, Bruce" <Bruce.West@morganstanley.com>, "Olidge, Darilyn"
<Darilyn.Olidge@morganstanley.com>, "Loshiavo, Richard"
<Alichard.Loshiave@morganstanley.com>, "Gerspach, Jim"
<Jim.Gerspach@morganstanley.com>, "Gerspach, Jim"
<Jim.Gerspach@morganstanley.com>

Guys, What are your' thoughts?

This piece on Divident Yield Enhancement for US Stock was sent to PMM sales people in Asia.

I have not investigated whether the swap structure only works for clients in Asia or if this is a product that can be potentially used with some of our non-US exclusive clients. Let me know if you have any further information on this product...eg

---- Original Message ---

MS-PSI* 020758

Permanent Subcommittee on Investigations **EXHIBIT #45 - FN 125**

1

Subject: Stock] Date: [Trading Idea: Dividend Yield Enhancement Swap for US

Thu, 14 Jun 2001 18:38:57 +0800 Townie Fang <Tommie.Fang@morganstanley.com> Tommie.Fang@morganstanley.com From:

Reply-To:

Reply-To: Tommie.Fang@morganstanley.com

Organization: Morgan Stanley

To: hpang <hpang@ms.com>, pwmg <pwmg@ms.com>, pwmhksa

<pwmhksa@ms.com>, pwmhksales <pwmhksales@ms.com>, pwmsing

<pwmsing@ms.com>, vchen <vchen@ms.com>, Kelvin K Ng

<kelvin.Ng@msdw.com>, hkedmkt <hkedmkt@ms.com>

CC: Kelvin.Ng@msdw.com>, hkedmkt <hkedmkt@ms.com>, hkedsp

<hkedsp@ms.com>, Stevan Vreelj@morganstanley.com>,
Hogan <Simon.Hogan@morganstanley.com>, Stan Siao

<stan.Siao@morganstanley.com>

-Internal Use Only-

Dear all,

Below is a potential trading idea proposed by our equity derivative structure team. Please take some time read through the structure and attachment and call us if you have any feedback/questions at 2848-5993.

Background:
-> Non-US investors (resident in Bong Kong, Taiwan, Singapore, Cayman Islands, Jersey etc.) typically suffer withholding tax on US dividends, ranging from 15-30%
-> Instead of buying/holding the stock directly, clients can enter into a Total Return Equity Swap with Morgan Stanley and achieve

yield enhancement
-> Target Client: Those who has held/will purchase large (more than US\$10mil) US Stock portforllo and current receive less than 100% of the dividends

Quick Sample:

Assumptions: Notional Value of US Shares US\$ 100 'MM Annual Dividend Yield (estimated) 1.20% Annual Dividend US\$ 1.20 'MM Withholding tax 30% US\$ (0.36) 'MM

If clients enter into the Total Return Equity Swap: Annual Value of Morgan Stanley Yield Enhancement US\$ 0 18 'MM (15% of the Annual Dividend) Estimated Pick-up on Notional p.a. 18 bps

In this case, the sales credit would be 9 bps on the Notional on the top of normal commissions.

Check List:
(1) What % of the dividend does your client receive in (1) cash,
and (2) tax credit:
(2) Can your client enter into derivative transactions? Do they
have ISDA Docs?

(3) Minimum size/break fees: US\$10mil with \$5,000 break fee if dividend received is less than US\$80k.

Attached please find:

summary of estimated yields for each MSCI-US share Dividend withholding tax rates for each treaty country

Thanks,

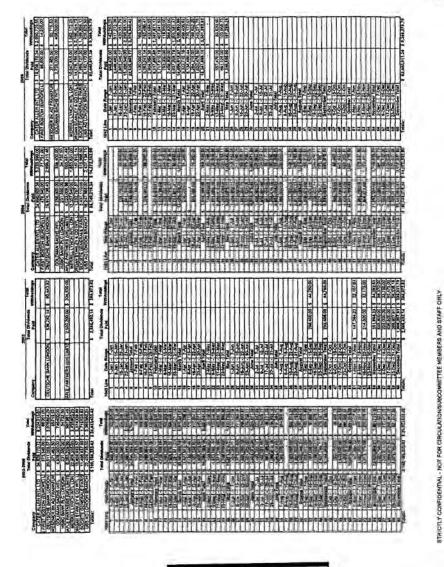
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Tommie Fang

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Permanent Subcommittee on Investigations **EXHIBIT #45 - FN 127**

From: Peculian, Scott (IED) <Scott.Peculian@morganstanley.com>

Sent: Wednesday, December 14, 2005 12:59 PM

To: Patel, Chirag (IED) <chiragp@ms.com>; swap <swap@ms.com>

Cc: fpgswap < fpgswap@ms.com>
Subject: RE: Possible Div Enhance Trade

All confirmed. Thanks very much.

From: Patel, Chirag (IED)
Sent: Wednesday, December 14, 2005 10:40 AM
To: Patel, Chirag (IED); swap
Ce: fpgswap
Subject: RE: Possible Div Enhance Trade

Scott - To confirm our conversation, i have relayed the following to Lansdowne who will contact your group directly to trade if they decide to pull the trigger:

Open pos. by trading straight into swap

After the div...you can cross the stock to the clients PB acct. if they do not want to close out

Thx, Chirag

Chirag Patel 25 Cabot Square London E14 4QA Tel: +44 207 425 7332 Fax: +44 207 425 4546

*

From: Patel, Chirag (IED)
Sent: 14 December 2005 11:24
To: swap
Co: fpgswap
Subject: FW: Possible Div Enhance Trade
Importance: High

Guys - Spoke to Lansdowne:

couple of different ways i think we can handle this:

- They trade straight into swap with yourselves.....then trade straight out in the market with yourselves again - pls. confirm pricing and Div you can pay for this
- 2) They trade straight into swap onto LN's booksdiv is enhanced then position is closed by entering

Permanent Subcommittee on Investigations
EXHIBIT #45 - FN 128

a VWAP order in the market.

Pls. let me know your thoughts/suggestions

Cheers./

Chirag Patel 25 Cabot Square London E14 4QA Tel: +44 207 425 7332 Fax: +44 207 425 4546

×

From: Ryan, Declan (IED) Sent: 14 December 2005 10:30 To: fpgswap Subject: FW: Possible Div Enhance Trade Importance: High

Pls get back to Justine on this,

Declan Ryan Vice President (P) +44 (0)20 7425 7331 (F) +44 (0)20 7425 4546 *

From: Justine Ayling [mailto:jayling@LansdownePartners.com]
Sent: 14 December 2005 08:46
To: Ryan, Declan (IED)
Subject: Possible Div Enhance Trade Importance: High

Morning Declan,

Our Global Financials team are thinking of purchases a US name which pays a special dividend of \$6 and were wondering if they could potentially swep it out to get a div enhancement.

The name of the stock is Ameritrade.

Please could you let me know if this is possible, the enhancement that we could expect to recieve and any additional information that we need to me made aware of

Thanks Justine

Justine Ayling

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Lansdowne Partners Limited
15 Davies Street, Landon, WIK 3AG. Telephone: +44 (0)20 7290 5500 Facsimile: +44 (0)20 7409 1122 Email: jayling@l.ansdownePartners.com

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 Microsoft (MSFT US) will pay an exceptional dividend of USD 3 (10.5% yield) in November in addition to the normal quarterly dividend (USD 0.08) in August. Investors will suffer either 30% withholding tax (offshore) or 15% withholding tax (onshore) on this dividend. Morgan Stanley has 2 different trades that will allow a client to enhance the yield of their holding to 2 different levels depending on their sophistication / risk appetite.

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Enhancement: Client Receives 100% of dividend

Costs: -

 Financing Cost (50 basis points or 20 bps if the position is "fully paid");

- Commission (negotiable, usually USD 0.05)

2 costs are negotiable & will normally amount to about 5% of dividend*

Structure: Client Sells shares to Morgan Stanley. Morgan Stanley sells a derivative to the client. Enhancement is passed back through the derivative. In order to receive 100% of dividend, on unwind, Morgan Stanley must sell stock back to market (not the client) and close out the derivative.

Instrument(s) used: Sale v Swap; Sale v (Listed) Certificate; Sale v SSF; Sale v (Listed) Option

* Please speak to Sales Team / Traders if there are any queries

Y Please speak to Sales T

Scenario 2: The European Trade

Enhancement: Offshore Client Receives 89% of dividend (from 70%)

Onshore Client Receives 92% of dividend (from 85%)

None Costs

Structure: Client sells shares (through a broker) to Morgan Stanley. passed back through the derivative. On unwind the reverse occurs. Morgan Stanley sells a derivative to the client. Enhancement is

Instrument(s) used: Securities Lending; Sale v Swap; Sale v (Listed) Certificate; Sale v SSF; Sale v (Listed) Option; Equity Repo; Sell buyback

Alternatively, the shares are simply lent to Morgan Stanley.

MS-PSI 020296

RE: MSFT

Cox, Byron

From: Steve Maresco (sm@eminencecapital.com)
Sent: Friday, October 08, 2004 9:48 AM

To: Thomas, Alan (IED) Subject: RE: MSFT

Yes - I voicemailed you earlier today. One liming question - assuming we are in the swap for 30+ days prior to record date, I assume we could unwind the swap at any time subsequent to record date, correct?

Thanks.

Steve

---Original Message
From: Alan Thomas [mailto: Alan Thomas @mmrganstanley cran]
Sent: Friday, October 08, 2004 11:42 AM
To: Steve Marseo
Subject: WSFT

Steve,
Still plenty of time, but I believe you had wanted me to contact you
regarding MSFT div enhancement this week. We are ready when you are.
Have a nice workend,
Alan

This is not an offer (or solicitation of an offer) to buy/sell like securities/instruments mentioned or an official confirmation. Morgan Stanley may deal as principal in or own or set as market maker for securities/instruments mentioned or may advise the issuers. This may refer to a research analyst/research report. Unless indicated, these views are the author's and may differ from those of Morgan Stanley research or others in the Firm. We do not represent this is a socurate or complete and we may not update this. Past performance is not indicative of future returns. For additional information, research reports and important disclosures, contact me or see https://secure.mu.com. You should not use email to request, authorize or effect the purchase or sale of any security or instrument, to send transfer instructions, or to effect any other transactions. We cannot guarantee that any such requests received via email will be processed in a timely manner. This communication is solely for the addressee(s) and may contain confidential information. We do not wist to receive these communications. In the UK, this communication is directed to the UK to those persons who are market counterparties or intermediate customers (as defined in the UK Finnocial Services Authority's rules).

1/18/2008

Permanent Subcommittee on Investigations EXHIBIT #45 - FN 142 MS-INT 004346

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Cayman Clent MS Cayman Yield Enhancement Transactions Stock Loan of Fully Pald for U.S Securities By MS Cayman (Omni Acon Chapteron (MS&Co) Morgan & Stanley & Co. Acting as Agent Morgan Stanley & Co (Orner Account) 0

Permanent Subcommittee on Investigations EXHIBIT #45 - FN 144

MS-PSI 019326

Total Net Dividends	\$778,180,00	\$284,200.00	\$735,692.39	10,000,790,01	\$1,777,602.60	\$1,785,478.47	\$3,256,995,70	\$130,480.00	\$13,973,172,30	\$164,868.88	\$218,000,55	\$427,720.30	\$308,623.01	\$91,835.90	\$20,550,577.88	\$485,851.16	\$1,546,152,48	\$5,679,464.78	\$10,500,230.08	\$4,340,992,18	\$143,181,61	\$72,657.20
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Permanent Subcommittee on Investigations EXHIBIT #45 - FN 147

MS-PSI 019327

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MSDW Equity Finance Services I (Cayman) Ltd. - Stock Borrowing Transactions (2000-2007)

MSDW Equity Finance Services I (Cayman) Ltd. - Stock Borrowing Transactions (2000-2007)

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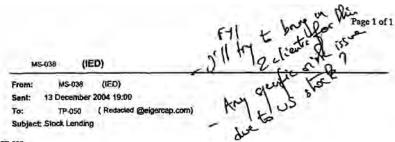
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MSOW Equity Finance Services I (Cayman) Ltd. - Stock Borrowing Transactions (2000-2007)

MSDW Equity Finance Services I (Cayman) Ltd. - Stock Borrowing Transactions (2000-2007)

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daried by the Permanent Subcommittee on Investigations	\$43,120.
dacted by the following dabening on my suggestions	\$37.514



TP-050

Here is an outline of the key points regarding a stock lending transaction as a way to increase the yield on your position in P

- You would lend your shares to Morgan Stunley for a period to be decided (typically a month)
 At maturity of the stock lending period, Morgan Stunley would pay you:
 1) a manufactured dividend equal to the dividends paid outr during the period net of the witholding tax that you normally incom is 85% of gross dividends.
 2) a stock lending fee equal to 6% of the gross dividends paid during the period

As an example with a special dividend of usi2.0 and a regular quarterly dividend of usi0.20 declared on Dec 7 2004, going ex-dividend on dec 16 2004,

- the manufactured dividend payable to you would be 2.2 times 85% = asd 1.87 per share

- the stock lending fee payable to you would be : 2.2 x 6% = usd 0.132 per share

We would recommend that you look at this potential transaction with your advisors to review the stock lending strategy from a legal and tax standpoint.

The next step would be to put a Stock lending agreement in place (OSLA is the generic name and form for these agreements). For this, all we would need is the name and address of the shareholding entity holding the P shares.

Given that the stock "goes ex-div" on december 16, 2004, Wednesday this week would be the very last time to implement

MS-038

All the above terms are purely indicative and will need to be refreshed prior to a transaction.

This is not an offer (or solicitation of an offer) to buyletd the incombine/neutronicity in an incomplete of the solicity of the control of the solicity of the control of the solicity of the control of the solicity of the

13/12/2004

Permanent Subcommittee on Investigations EXHIBIT #45 - FN 152

MS-PSI 020249

Page 1 of 3 From: Kunukkasseril, Xavier (EFS) Sent: Tuesday, March 01, 2005 10:38 AM To: Rivera, Sean (EFS); Patel, Rajeev (IED); Groom, Eric (EFS); McDougall, Ross (IED); Offei-Addo, Eric (IED) Cc: Abruzzo, Craig (EFS); Johnson, Bruce (IED) Subject: RE: Levin Cayman osla Sean. Yes, as Rajeev mentioned, this activity is suspended until a couple of issues are sorted out. I will follow up with you to give you an overview of the outstanding issues. Thanks, Xavler From: Rivera, Sean (EFS) Sent: Tuesday, March 01, 2005 9:40 AM To: Patel, Rajeev (TED); Groom, Eric (EFS); McDougall, Ross (TED); Kunukkasseril, Xavier (EFS); Offei-Addo, Eric (IED) Subject: RE: Levin Cayman osla Eric / Xavier, 1 know it's a big Issua here, but would like to provide Lavin with some color b/c he's looking for some US enhancements on his longs on MO (ex 3/11) and WWVY (ex 3/16) Sean From: Patel, Rajeev (IED)
Sent: Tuesday, March 01, 2005 9:33 AM
T : Groom, Eric (EFS); Rivera, Sean (EFS); McDougall, Ross (IED)
Subject: RE: Levin Cayman osla we need to hold off on everything until we get firm clarification on what we can and cant do and what collat we can and cant give From: Groom, Eric (EFS) Sent: 01 March 2005 14:27 T: Rivera, Sean (EFS); McDougall, Ross (IED); Patel, Rajeev (IED) Subject: RE: Levin Cayman osla Raj - Based on our conversations yesterday (re: Sowood), what are we going to be doing here wirlt collateral ? From: Rivera, Sean (EFS) Sent: Tuesday, March 01, 2005 9:21 AM To: De Coninck, Dennis (IED); Groom, Eric (EFS) MS-INT 001962 file://C:\Documents and Settings\7069\Local Settings\Temp\RE Levin Cayman osla .htm 1/2/2008 MS-PSI 001478 Permanent Subcommittee on Investigations

EXHIBIT #45 - FN 154

Page 2 of 3

Cc: McDougall, Ross (IED) Subject: RE: Levin Cayman osla

Hey Dennis.

Can we have an update here? Client just called looking to trade some US names that are nearer record date.

thanks.

From: De Coninck, Dennis (IED) Sent: Wednesday, February 23, 2005 12:05 PM To: Groom, Eric (EFS) Cc: McDougall, Ross (IED); Rivera, Sean (EFS) Subject: RE: Levin Cayman osla

I'll have the agreement signed by Cayoo overnight and by MS&CO tomorrow morning (Craig Abruzzo is in London), then e-mail signed version to the client.

-Original Message Frum: Groom, Eric (EFS) Sent: 23 February 2005 17:03 To: De Coninck, Dennis (IED)
Cc: McDougall, Ross (IED); Rivera, Sean (EFS)
Subject: RE: Levin Cayman osla

Signed and faxed back to below number,

What is the next step? The client called today wanting an update.

Thanks, -900

From: De Coninck, Dennis (IED) Sent: Wednesday, February 23, 2005 10:52 AM To: Groom, Eric (EFS) Cc: McDougall, Ross (IED); Rivera, Sean (EFS) Subject: FW: Levin Cayman osla

--- Original Message----From: De Coninck, Dennis (IED) Sent: 23 February 2005 15:52 To: McDougall, Ross (IED) Cc: Rivera, Sean (EFS) Subject: RE: Levin Cayman osla

We have agreed a final form and I e-mailed a sign-off sheet to Eric for signature on 21 Feb.

Eric, Can you sign the sign-off sheet and fax back to +44,20,7056.14857

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1/2/2008

MS-PSI 001479

Page 3 of 3

Thanks, Dennis

> ----Original Message From: McDougall, Ross (IED) Sent: 23 February 2005 15:49 To: De Coninck, Dennis (IED) Cc: Rivera, Sean (EPS) Subject: Levin Cayman osla

Dennis, can i get an update please

Morgan Stanley Ross McDougali Executive Director

MS-INT 001964

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MS-084 (IED) < Redacted From: @morganstanley.com>

Friday, December 7, 2007 6:46 AM Sent: (IED) < Redacted @ms.com> MS-134 To:

FW: PB and IPB US Borrows Subject:

From: MS-081 (IED)
Sentz 25 October 2006 08:41
To: =SMTP:fpgsource@morganstanley.com; =SMTP:epm@morganstanley.com
Cc: =SMTP: MS-181 @morganstanley.com; =SMTP: MS-216 @morganstanley.com;
ESMTP: MS-219 @morganstanley.com; MS-058 (EFS)
Subject: FW: PB and IPB US Borrows

As per Risk Management, we cannot borrow US assets from PB or IPB clients. We can do so from non PB or IPB clients and are awaiting clarification with regard to dealing with managers who have multiple PB's where the stock we are looking to borrow is held at another PB.

From: Vexaria, Manish (IED) Sent: 25 October 2006 08:24

T: ledgsp; fpgdiv; d1dkv Cc: Vekarla, Manish (IED); Martins, Roy (IED); Heme, Nicholas (IED); Berke, Matt (IED) Subjects: PB and IPB US Borrows

URGENT AND IMPORTANT

As discussed, we must STOP from borrowing PB and IPB US assets over dividend dates - with immediate effect, this transaction is not approved by Equity Risk Management.

If you have any questions, please feel free to have a chat with Roy or myself.

Permanent Subcommittee on Investigations **EXHIBIT #45 - FN 159**

MS-PSI* 020680

MS-PSI 019335

MSDW Equity Finance Services I (Cayman) Ltd. - Stock On-Lending Transactions (2000-2007)

Order Placer Name	Principal Name	Total Net Dividends
Dodoctod by the Dormonot C.	sociamintos on Invoctigations	\$273,792,191.58
redacted by the Fermanent Subcommittee on Investigations	ocollilice on livesugations	\$276,587,466.86
Redacted by the Dermanant Subcommittee on Investigations	becommittee on Investigations	\$240,449,284.67
incurred by the letitiation of	Dentillings of Hivesugations	\$58,055,200.16
Redacted by the Permanent Subcommittee on Investigat	henmittee on Investigations	\$16,218,102.71
ייסממיכם של מוס ביווומווסוור סם	מוסוווווויסס סוו ווואססוממווווויסס	\$12,601,112.14
Redacted by the Permanent Subcommittee on Investigations	scommittee on Investigations	\$142,568,970,79
		\$91,883,724.25
		S10 485 972 53

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Permanent Subcommittee on Investigations
EXHIBIT #45 - FN 161

ATTORNEY-CLIENT PRIVILEGED DOCUMENT CONFIDENTIAL INTEROFFICE MEMORANDUM

TO

JIM ROWEN, JULIAN SALE

FROM

JULES GOODMAN AND ADRIENNES, BROWNING, DB AMERICAS TAX DEPT.

SUBJECT: SWAP TAX POLICY DATE:

NOVEMBER 12, 2002

Summary of Meeting on 10/18/02

Jim Rowen, Julian Sale, Andres Leung, Jules Goodman, and Advienne Browning met at 5:00 p.m. to discuss the structured finance business conducted out of New York and the related US federal income tax risk related to this business. The discussion was based on a quantitative analysis completed by Nadeem Siddiqui (Controlling) on 9/23/02. The agenda for the meeting is attached.

The following points were noted:

- The structured finance business globally transacts swaps with counterparties on many different types of securities. The business traded in New York is based primarily on US securities including common stock, convertible preferred, convertible debt, RICS, REITS, and partnership interests, as well as ADRs. US equities comprise only approximately —% of the outstanding notional of the New York booked business. An estimate of average annual notional on US equity swaps for all clients for 2001 was \$2.8billion, with approximately \$2billion in notional with foreign persons (non-US) and \$.8billion with US persons. Based on an estimated annual dividend yield of 26%, U.S. withholding tax at the maximum rate of 30% on all manufactured dividends paid through swaps to foreign persons for this period, would be approximately \$12.6 dividends paid through swaps to foreign persons for this period, would be approximately \$12.6 million.
- Trading patterns have historically involved DB and the counterparty crossing stock off-exchange at both the commencement and manuity of the swap , with the exception of several clients who request market executions either at commencement or at maturity, or both. The structured request market executions either at commencement or at manniny, or both. The structured finance trading desk has not had sufficient staff to support large-scale market executions. This is changing. Recently, additional clients have requested market execution one or both ways. It is estimated that between 20-25% of all notional amounts currently traded in New York (across all underlying secucities) involve market execution one or both ways. In addition, a new trading group, to be run by Steve Miller, has been subtorized to support hedge fund market executions. It is anticipated that additional clients will be brought on by the EPS sales team for market executions around swaps, increasing substantially the notionals executed in the market as well as commission revenue for the firm. The analysis reveals that the trading patterns for swaps with foreign vs. US clients are similar. foreign vs. US clients are similar.
- > The stated policy of the structured finance business in New York is that DB will not execute swaps around dividend dates. The policy has been to require clients to hold swap positions for a

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minimum team of 30 days. We cannot force clients to maintain the positions for this period, but strongly discourage early terminations. Nadeetn's analysis supports DB's adherence to this policy, indicating an average team of 157 days for long swaps and 110 days for short swaps on US equities.

The quantitative analysis was very difficult to perform because the current operational systems do not ensinain the information in a format to support provision of this data. In addition, the transition from ESS4 to ESS5 has changed the way in which information is stored. Many aspects of this analysis had to be manually developed.

Swap Trading- Going Forward

The DB Americas Tex Department would like the structured finance business to continue to reduce its US withholding tox risk by increasing, as quickly and to the extent possible, the percentage of market executions around rwsp trading in US equities with foreign elients. In this regard, it is preferable to execute under in the market both in and out of the swap. Where only one way market execution is possible, it is preferable to execute into the swap.

The policy of trading for a minimum term should be toodified to require a 45-day minimum term, increased from 30 days. The 45 day term, while not mandated by any statute or regulation relating to swaps, conforms to the period of time the IRS believes is necessary to hold foreign stock for foreign tax credit capture, and may provide an analogy for this buttness as well.

On-going Documentation

It is very important to secure accurate data to document the amount of this assumed by the business on a going forward basis. To this end, we would like you to provide to us the following information on a semi-annual basis:

- 1. The average notional of all asupe traded in New York, separated into foreign and US clients.
- 2. The same breakdown of all swaps on US equities, itemized by client
- The amount of dividends with record dates during the period, itemized per foreign client (one aggregate amount for US clients is fine).
- Identification of those clients that execute in the market, whether they execute one or both ways, and percentage of notional with at least one way market executions.
- Average term of swaps to US equities in ESSS (based on individual manascrious, not "basket"), for both US and foreign clients.

Please let us know if you have any questions.

APPENDIX A

Alternative Trading Patterns Under Discussion

Step-in: Client has a FB account at mother tirm. It will direct that other tirm to purchase x# shares for Client's account during the trading day. At the end of the day, before the close, Client talls DB and asks whether DB wants to take over the Client's order. If so, DB calls the other tirm and directs to tell the stock to DB at the poice originally traded for the Client. DB settles against the other firm. Swap is struck at sverage acquisition price.

Trading Along Side: Client calls DB at beginning of trading day, and informs DB that it will be acquiring stock through another firm during the trading day, 1% of which it wants to hold in PB and y% in evep. DB calls the other firm at the beginning of the day, and informs it that DB wall purchase y% of stock purchased for Client during that day. DB settles against other firm.

Market on Close (Listed Names): DB puts in an order to sequire shares MOC - almost to cost to us. Client, however, will most likely have two commission costs: the first to sequire at its PB account as it accumulates the position, and the second for the MOC sale.

Market on Close (NASDAQ Names): DB puts in an order to acquire shares at the last independent closing price after 4pm - almost no cost to us. Client, however, will most likely have two commission costs: the first to acquire at its PB account as it accumulates the position, and the second for the sale. In addition, because there is no mechanism to guarantee the close on NASDAQ stocks, the client will be taking greater risk in the market.

Securities Futures Contracts: New financial product on single stock or narrow-based indices or baskets. Futures trade on designated exchanges (currently OneChicago and NQLX), and settle against the related cleaninghouse. Further analysis will be done on derivative structures using SSFs.

3

APPENDIX B

Agenda for Discussion

- A. What is the Equity Prime Services ("EPS") business?

 1. Swaps, stock lending, and prime brokerage for US and Int'l equities PLUS other securities convertibles, hedge funds, RET'S

 2. Booking centers-NY, London, Tokyo, HK, Sidney

 2. Why do clients enter Into swaps

 3. Primarity leverage and Reg T

 b. Secondarity: tax related issues-dividends, tax credits (UK), 875/1446 issues, FIRPTA, PFIC blocker trades

 3. Overall volumes and P&L for the global swap business

 5. Number of swaps, number of clients

 6. % volume in US equities

 7. % volume long vs. short
- B. Booking system
 Sessation
 Bessation
 Sessation
 Status of Transition
- C. Trading patterns

 1. How are swaps traded? (Interaction bx sales and trading)

 2. Why would a client trade the underlying stock in the market vs. cross

 a. Change in trading patterns- more execution in DBSI

 b. How this change is being affected

 c. Single stock futures project

 3. How does a cross work? How is the pricing determined?

 4. Do all clients buy stock back after the swap ends?

 5. Average term: swaps vs. MAPS
- D. Information processing
 1. What type of information can be obtained from current systems
 2. Prospective changes in IT

GS-PSI-05735

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cc:		
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-Orig	ginal Message	
	Chodadadi, Arlen	
	hursday, February 23, 2006 1:33 PM	
	ropuvka, Gary; Wianecki, Karl	
Subject	t: FW: Meeting with Deutsche Bank	
Based	on our outlook calendars, it looks like 1:30pm nex	Tuesday is free for everyone. Does that time work
for you		Transaction and transaction of the contract of
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	ginal Message	
From: s	scott.carter@db.com [mailto:scott.carter@db.com]	
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	ott.carter@db.com	
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Gary/C	arl/Arlen,	
Are vo	u all available next Tuesday 2/28 at 1 PM for a me	sting to discuss securities landing in detail?
ALE YOU	d all available flext 1 desday 2/20 at 1 F W for a file	setting to discuss securities lengthly in details
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		nittee on Investigations #45 - FN 179

initial Proprietary Business Information edition Sachs Group Inc. ed Pursuant to Senate Rule XXVI(5)(b)(5)



To: SHAHCHI,LNDB@bloomberg.net cc: Subject:

Message#: 306247
Message#: 306247
Message Sent: 02/12/2007 11:40:41
From: DAVISEN LNDB@bloomberg.net|BEN DAVISS|DEUTSCHE BANK AG, LO|1726|72791
To: SHANCHI.LNDB@bloomberg.net|CHIRAAG SHAH|DEUTSCHE BANK AG, LO|1726|115005
Subject:

mate - can you use NVS US for div? Thanks
Reply:
yep we can use it - do you need dates?
Reply:
CHECK WITH THE GUYS ON THIS...ITS A GDR SO A LITTLE
DIFFERENT...ALSO CAN YOU GET ME THE PRU DATES PLEASE, CPTY
GOING MUTS AT ME

Permanent Subcommittee on Investigations
EXHIBIT #45 - FN 180



To: SHAHCHI.LNDB@bloomberg.net oc; Subject:

Message#: 164659

Message Sent: 03/12/2007 08:23:51

Message Sent: 03/12/2007 08:23:51

From: CORMAR.LNDB@bloomberg.net!MARTIN CORNELLIDEUTSCHE BANK AG, LO|1726|160513

To: SHAHCHI.INDB@bloomberg.net|CHIRAAG SHAH|DEUTSCHE BANK AG, LO|1726|115008-Subject:

Hi Martin - I understand you spoke to Shane last week about some US stocks - MO and RAI - related to dividends. I am going to be trading these, and so I was wondering if the positions I see in I-delta is what I can trade?

Reply:
Hi - what do you mean by I-delta?

Reply:
Ok sorry - its our system which shows stock quantities. do you want to trade 1,908,100 shares of MO US and 150,000 shares of RAI? We can give you 97.5% of the dividends on those names Reply:

yes, thats the correct size. thanks mate

Permanent Subcommittee on Investigations
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Simon Pearson To: Adrian Todd/db/dbcom@DBAPAC cc: Subject: Re: Travel Dates 2

us mkt for div is traded out of London. I think Rich resigned last week but not 100% sure. Give me a call tomorrow to discuss your US ideas if you want...cheers

Simon Pearson

Inventory Management - Complex Equity
Office +44 207 547 3237
Mobile/Blackberry
Home +
Fax +44 113 336 1598
Deutsche Bank AG London
Global Markets
1 Great Winchester Street
London EC2N 2EQ

- Reducted by the Permanent Subcommittee on Investigation

Adrian Todd/db/dbcom@DBAPAC

Adrian Tedd/db/dbcom@DBAPAC 03/11/2007 09:52 PM

To Simon-GEF Pearson/DMGEQ/DMG UK/DeuBa@DBEMEA

œ

Subject Travel Dates

Chief

I'm in NY on 19th & 20th and London 21st-23rd

In NY - I intend to sit down w/ Rich Kennedy to follow up on some Illiquid Equity trades we're doing, but also to talk about structures that I developed many years ago, which might be of interest. Do you get involved in the US mkt at all?

Pencil in a slot for a catch up

Todd

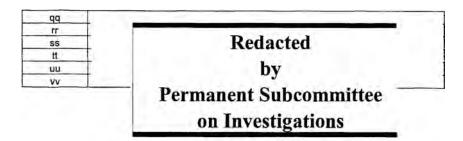
Global Markets Equity - Structuring

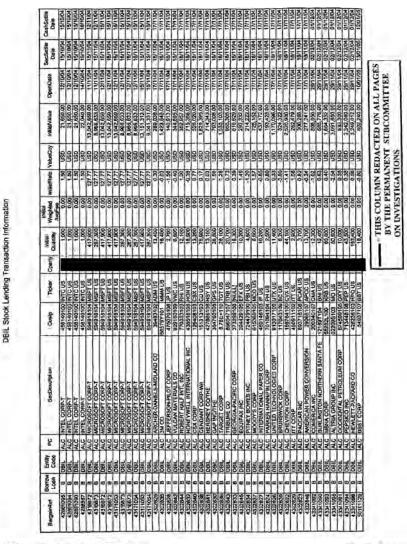
Tel: Mob: +61 2 8258 2322

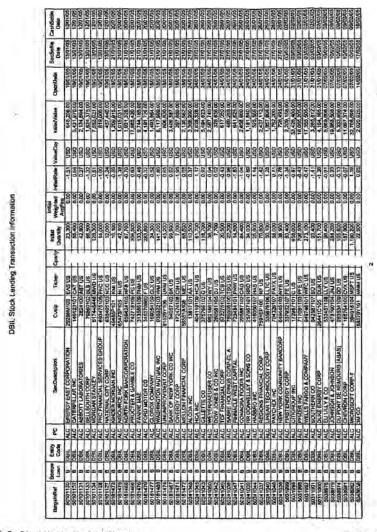
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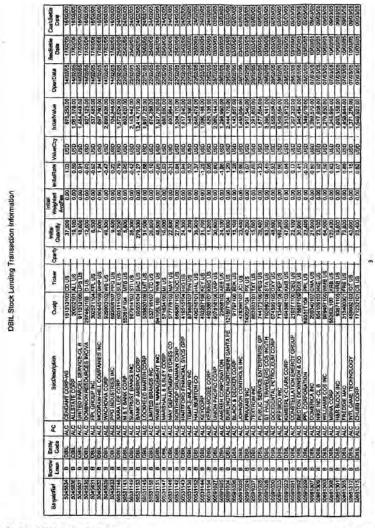
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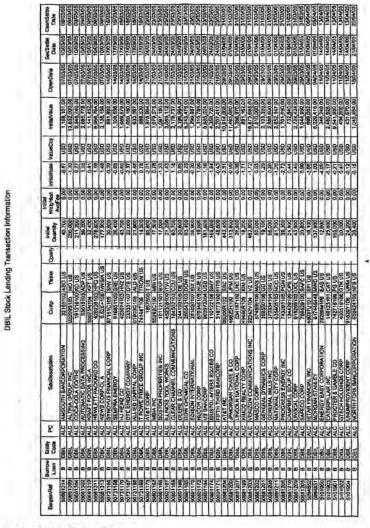
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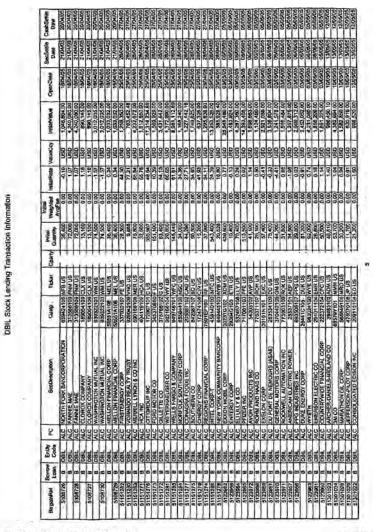


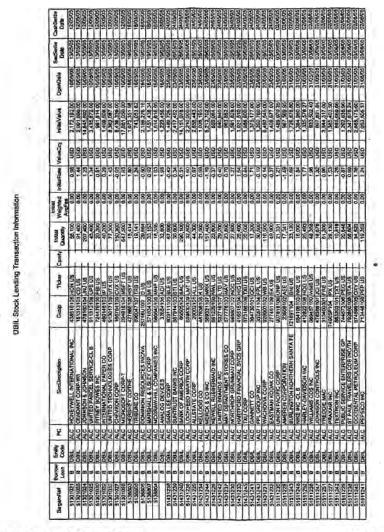


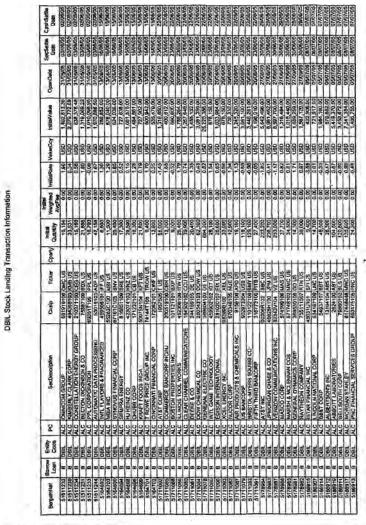


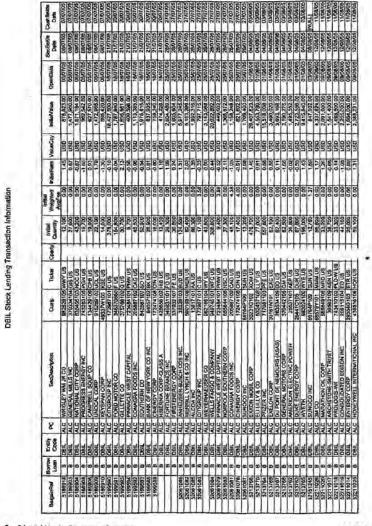


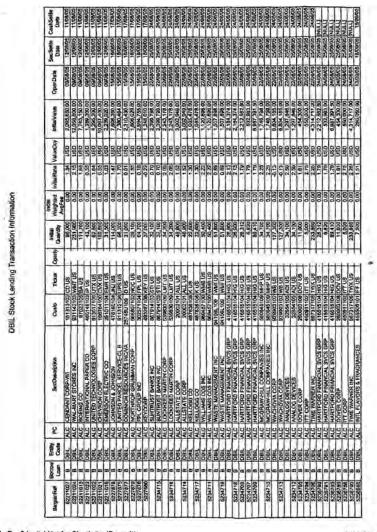


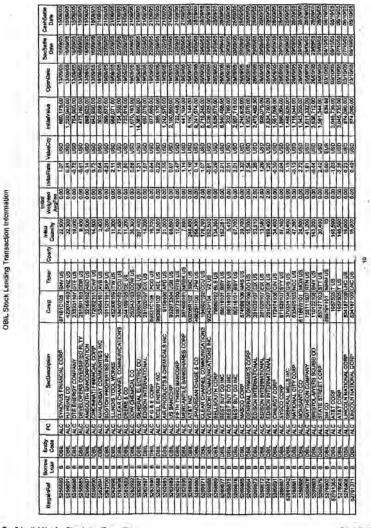


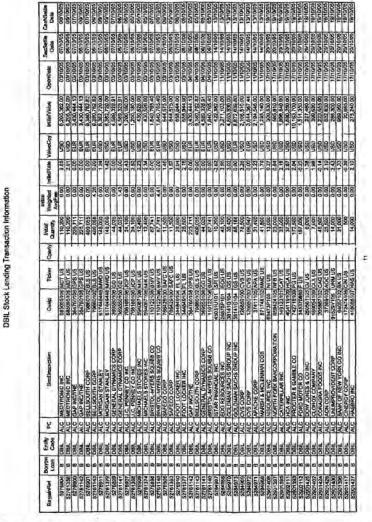




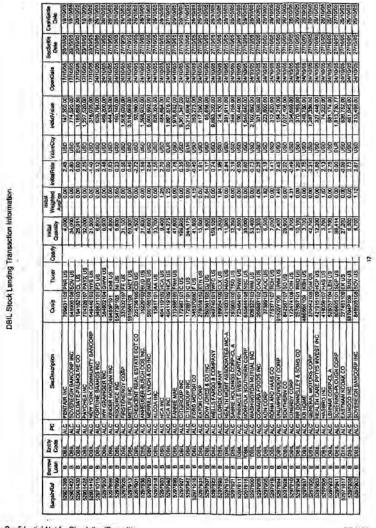


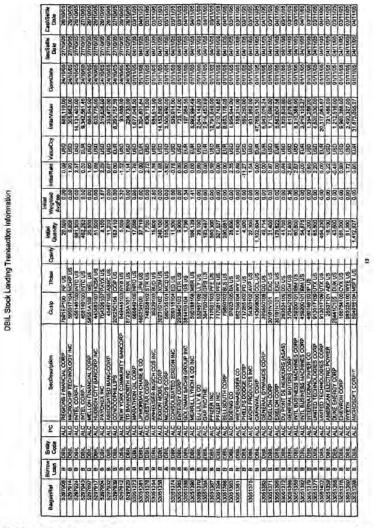


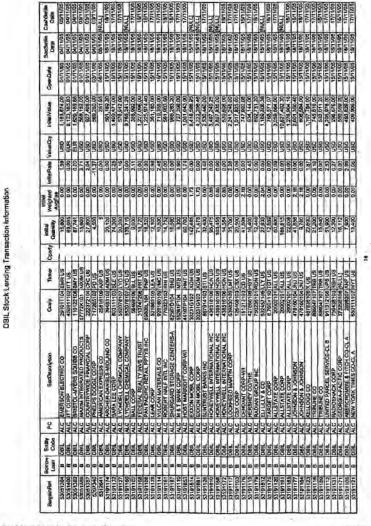


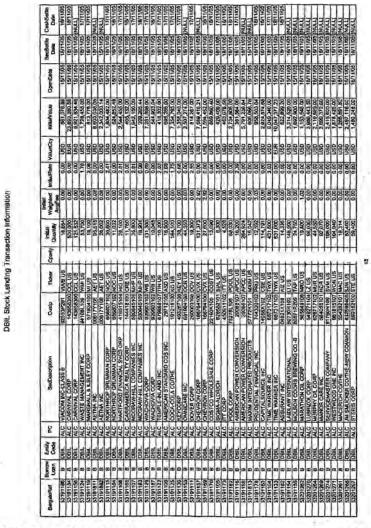


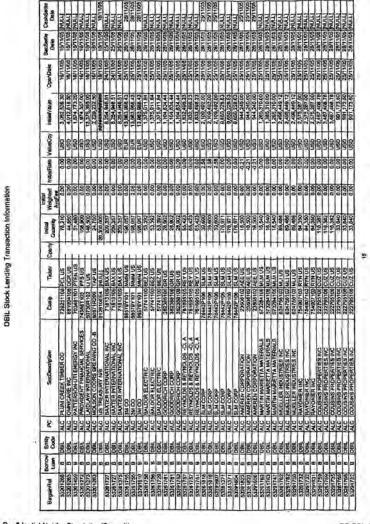
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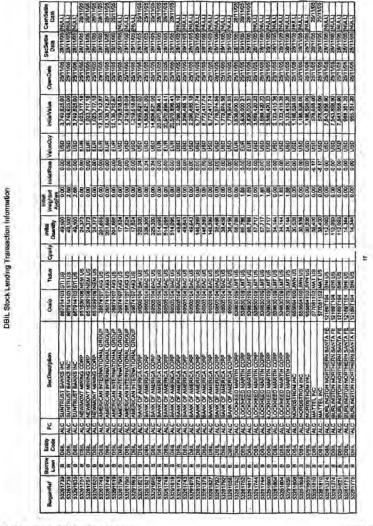


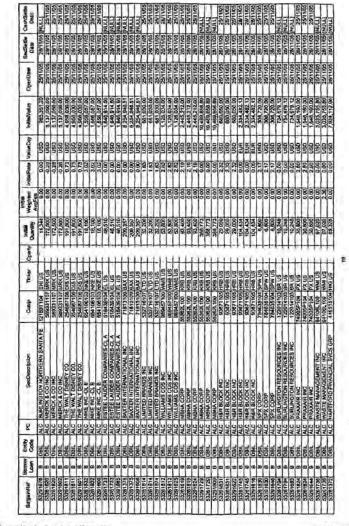




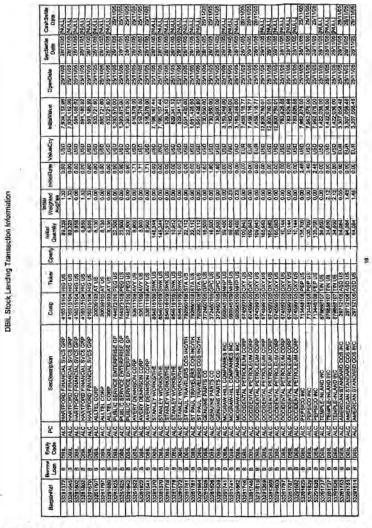


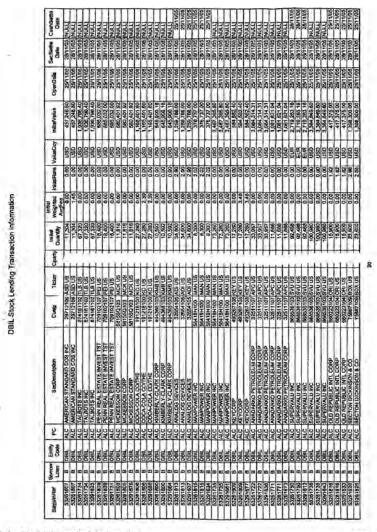


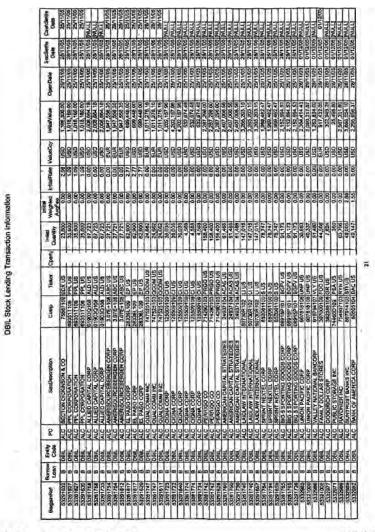




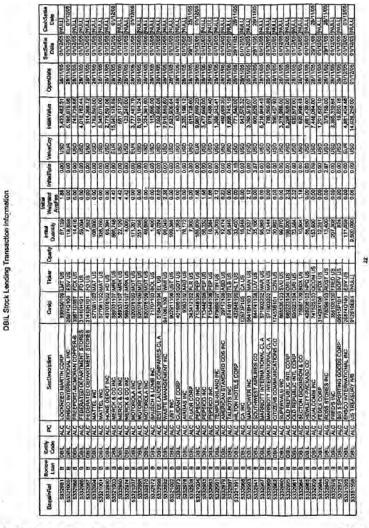
DBIL Stock Lending Transaction Information

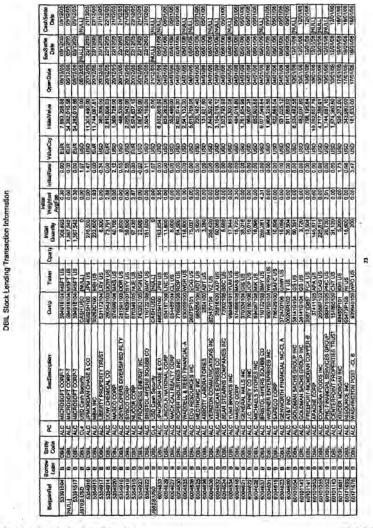


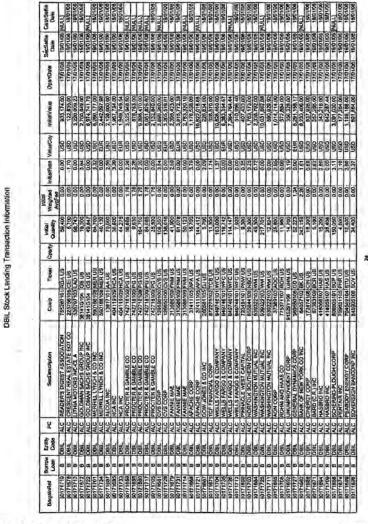




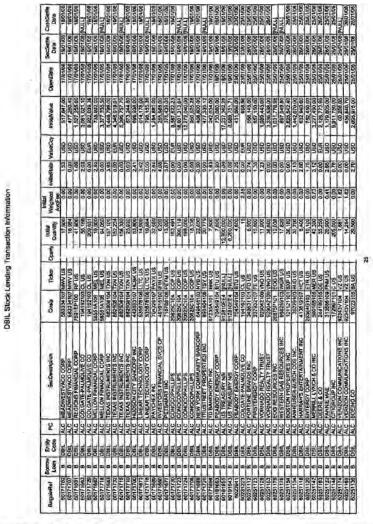
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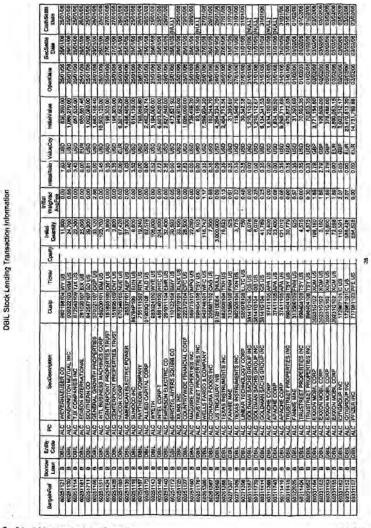




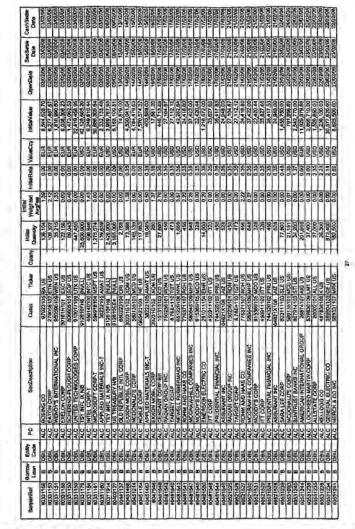
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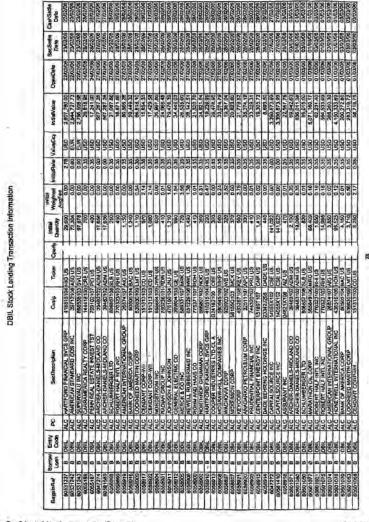
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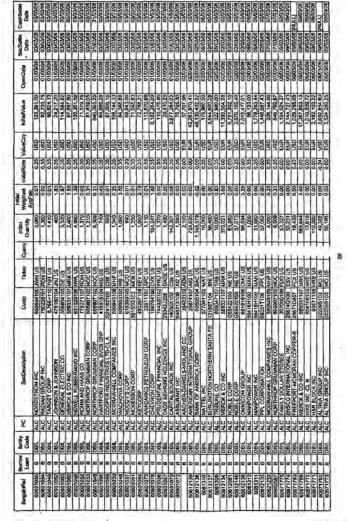


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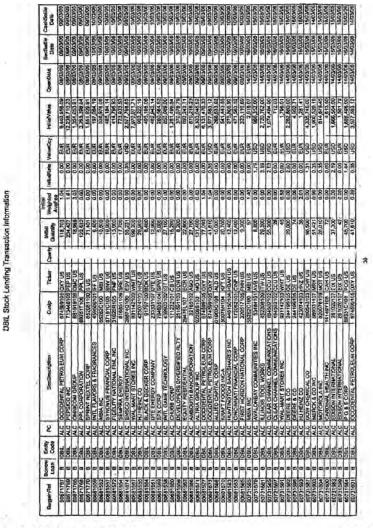


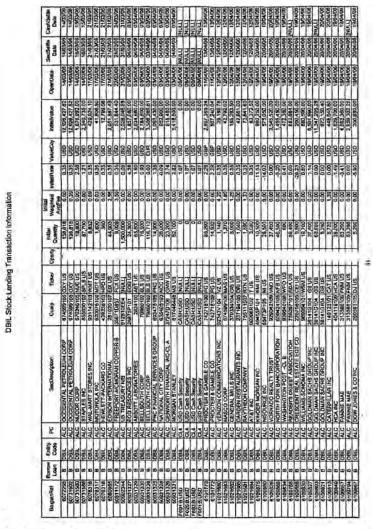
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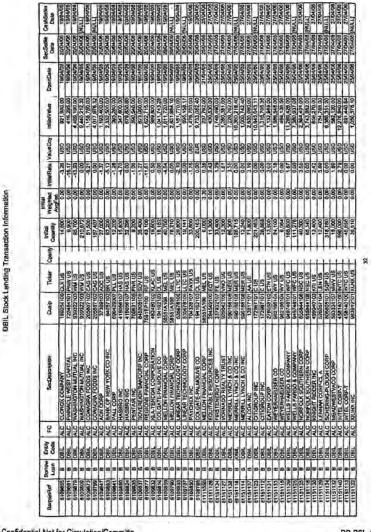




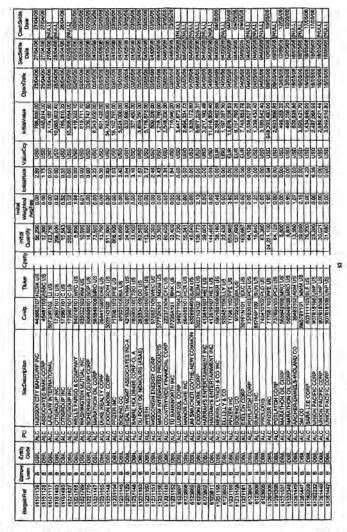
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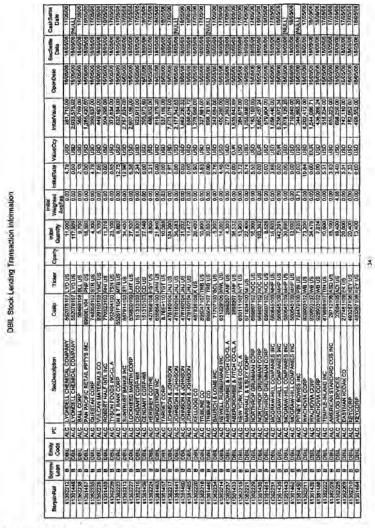


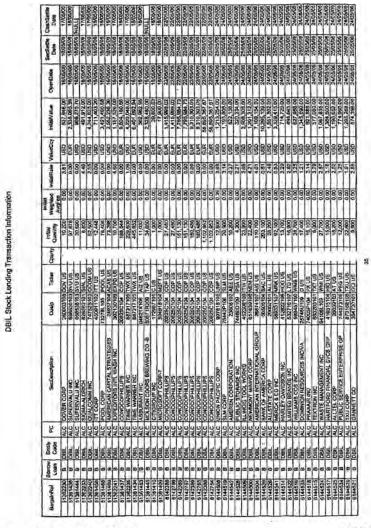


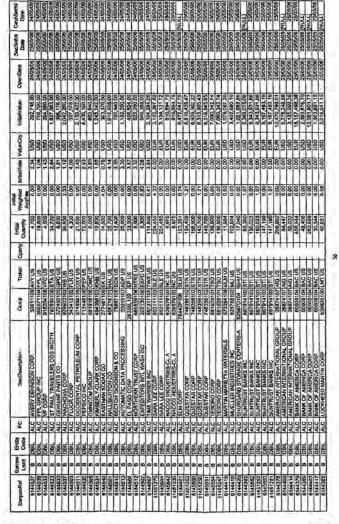
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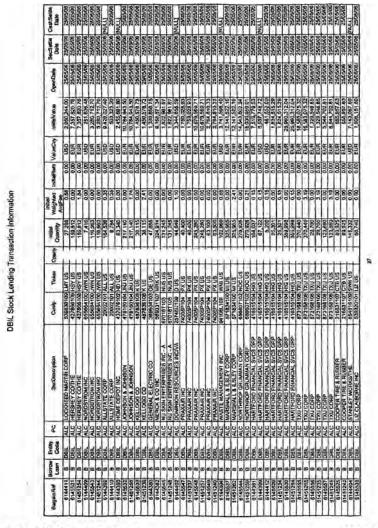
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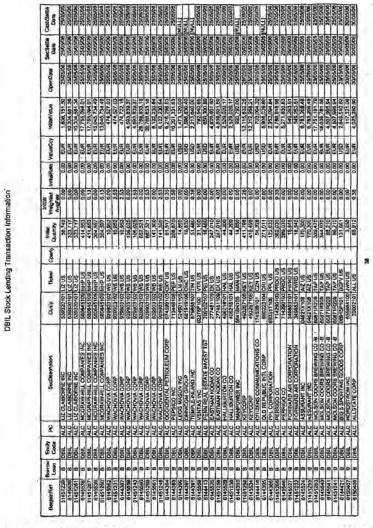


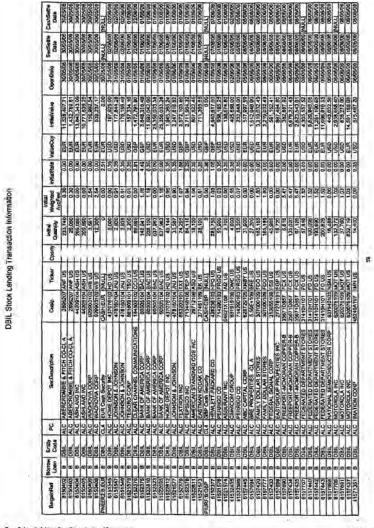


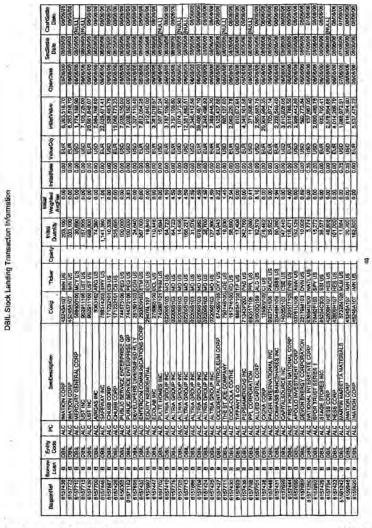


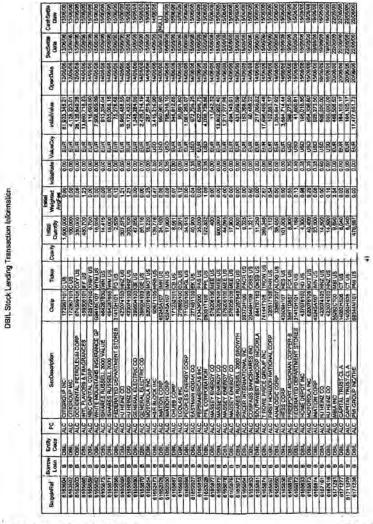
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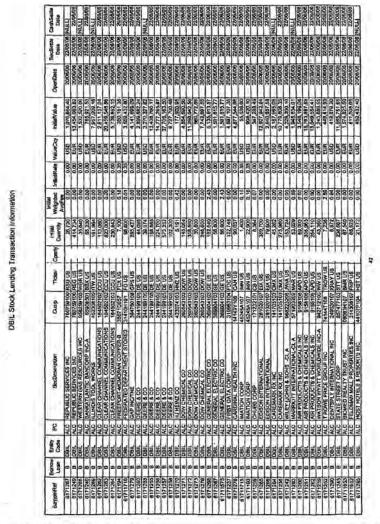




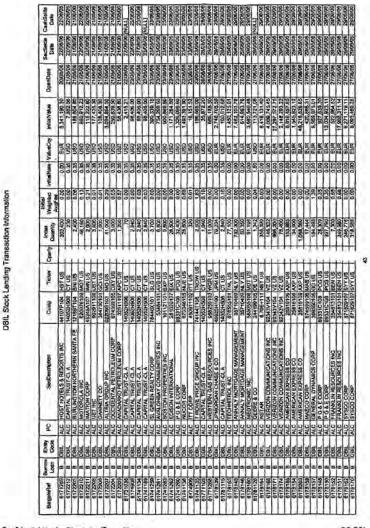


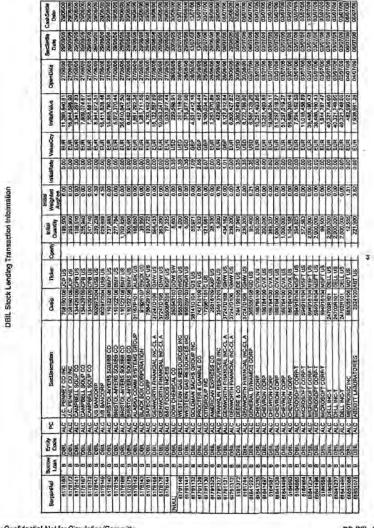


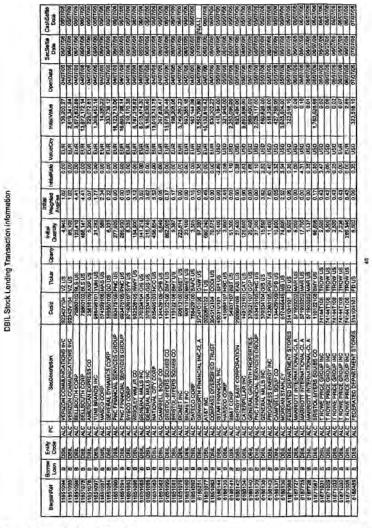
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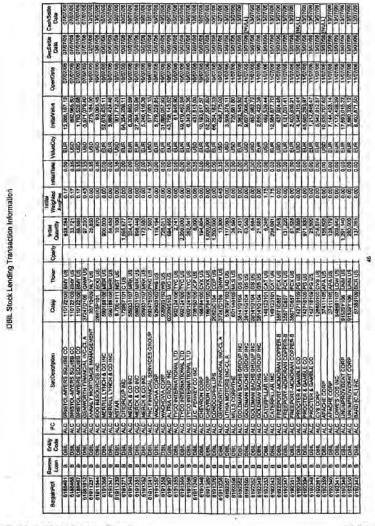


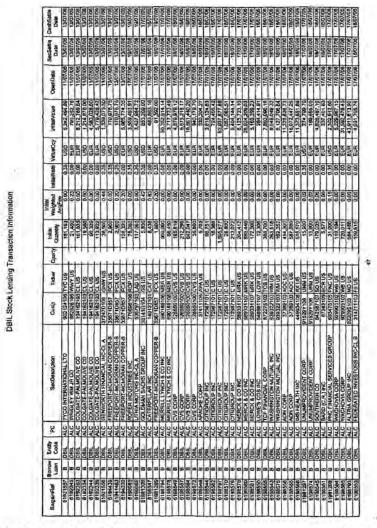
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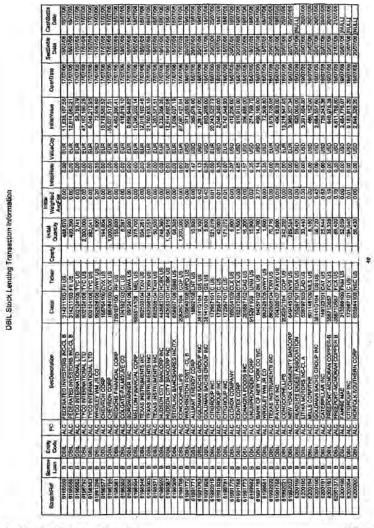




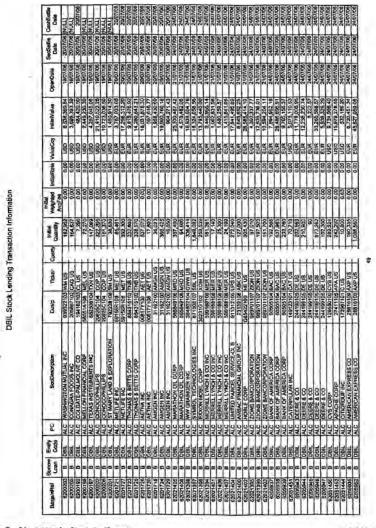


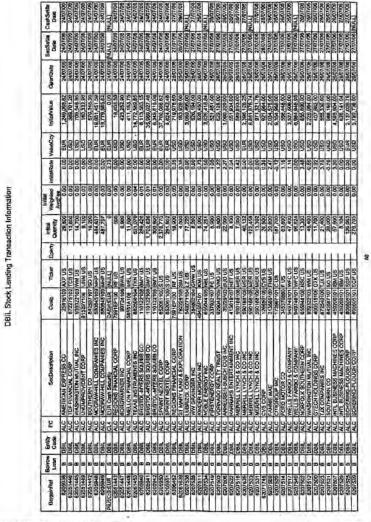




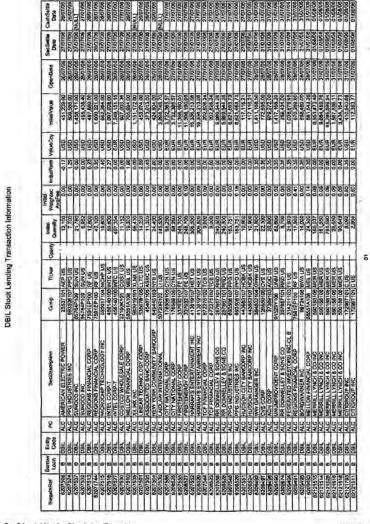


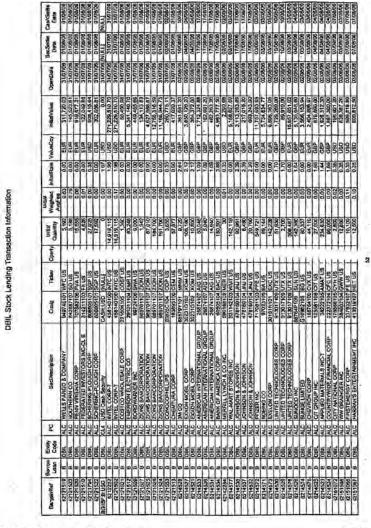
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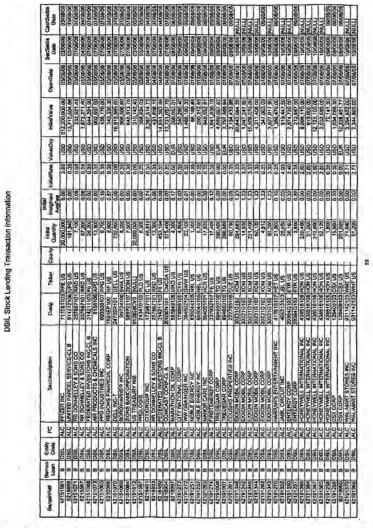


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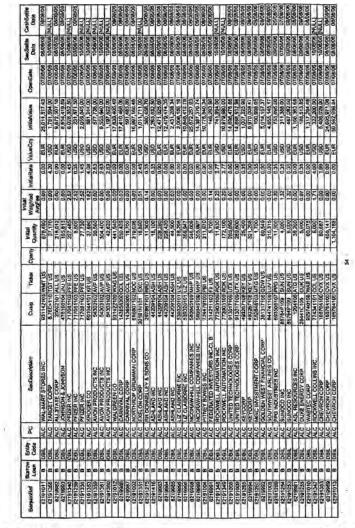


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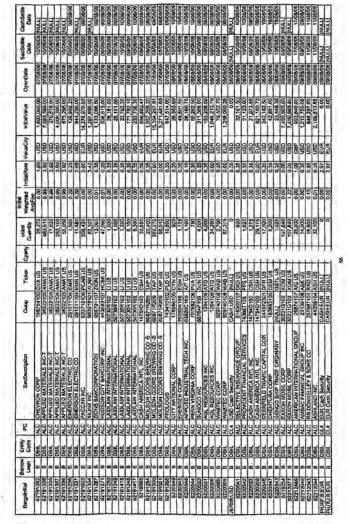


DBIL Stock Lending Transaction Information

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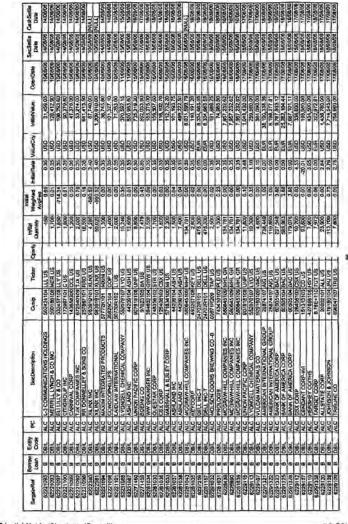
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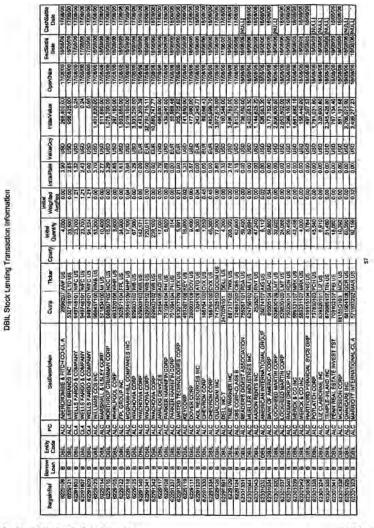
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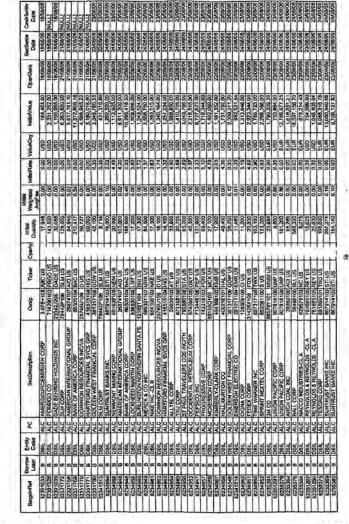
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DBIL Stock Lending Transaction Information



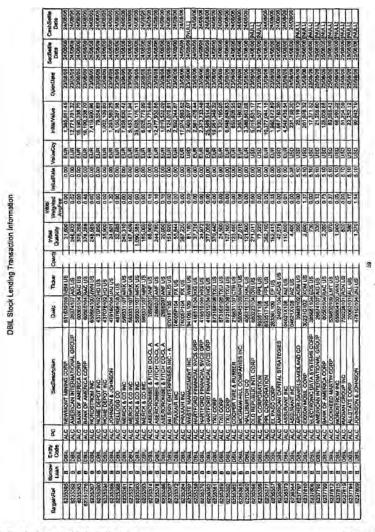
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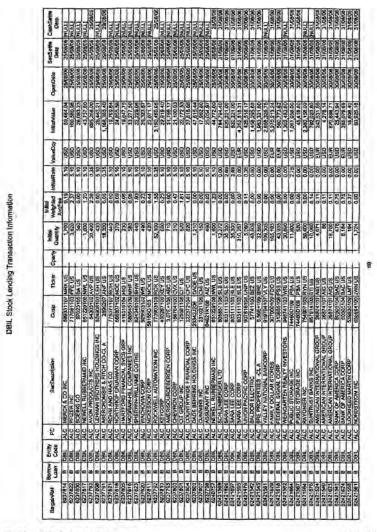


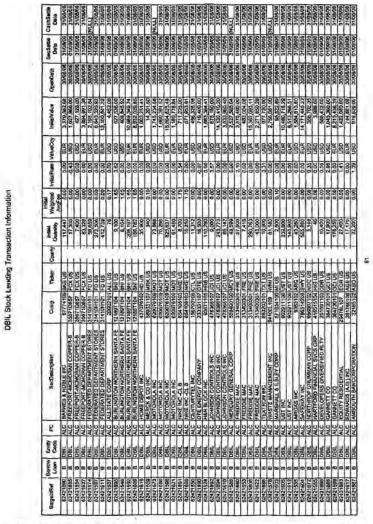


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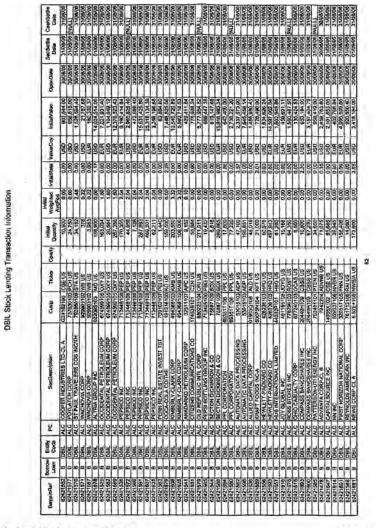
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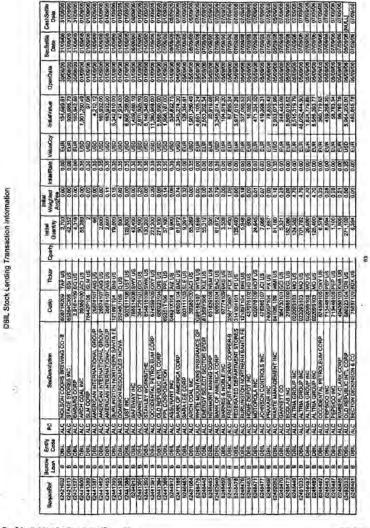


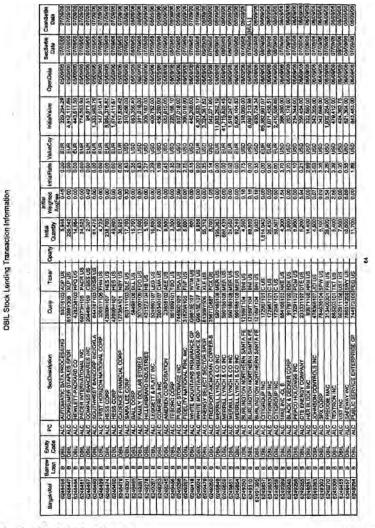


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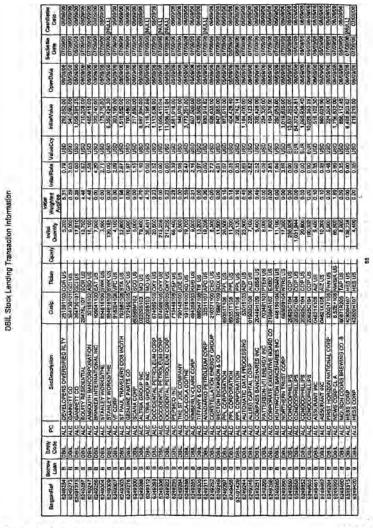


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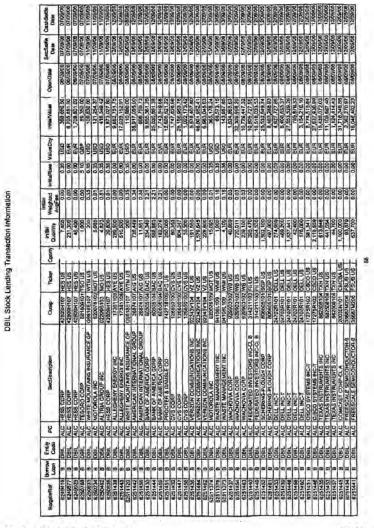


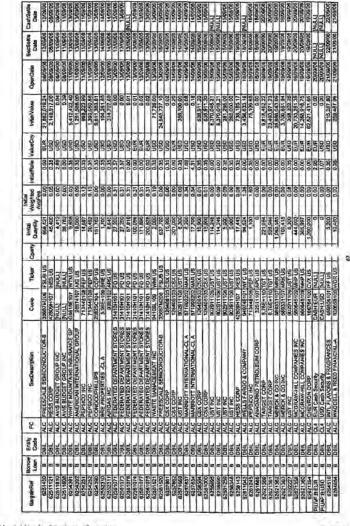


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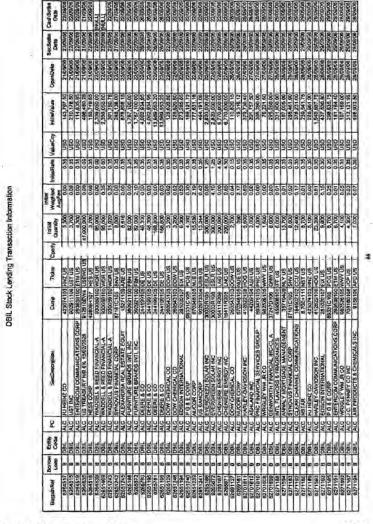
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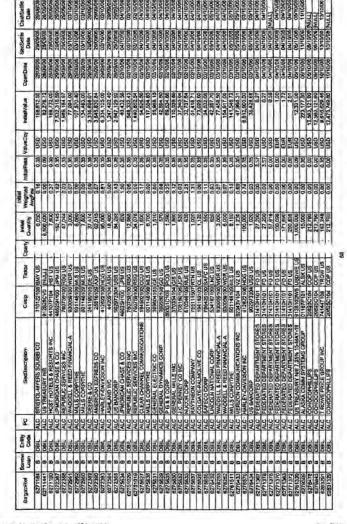


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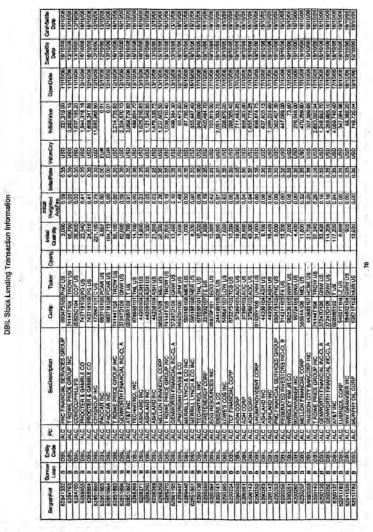
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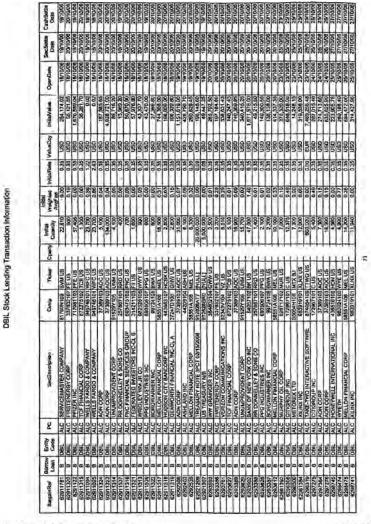


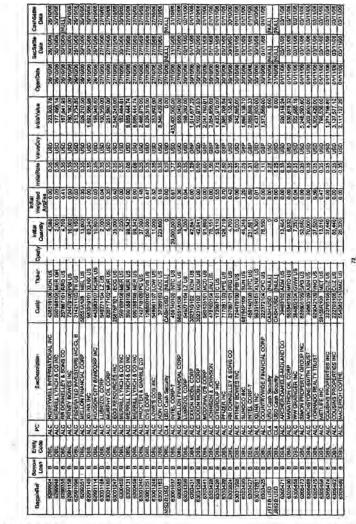
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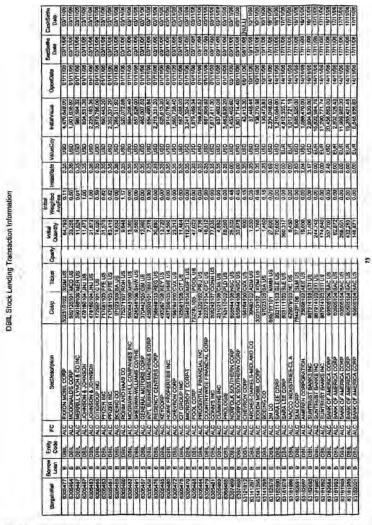


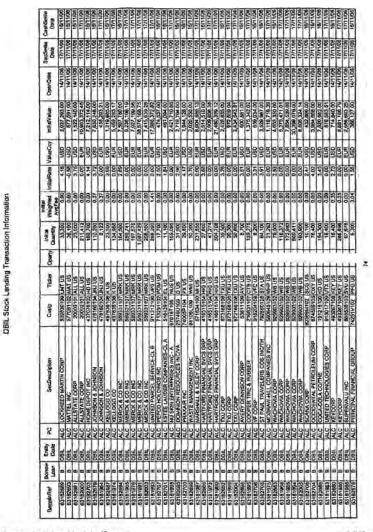


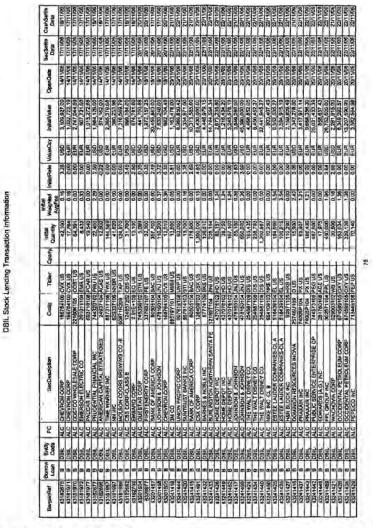
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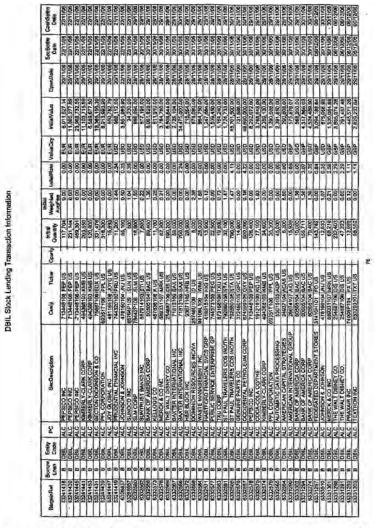
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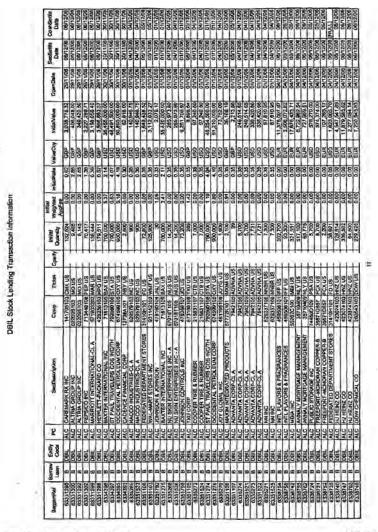
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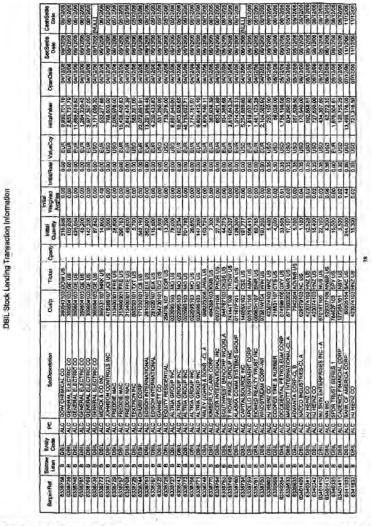


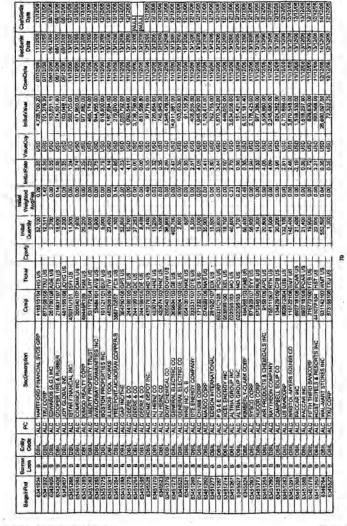




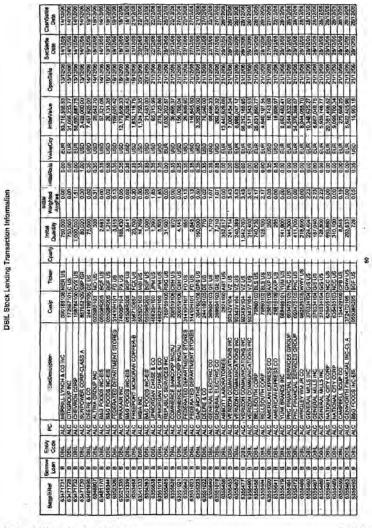


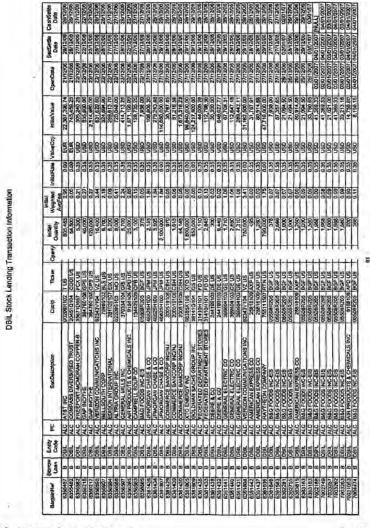


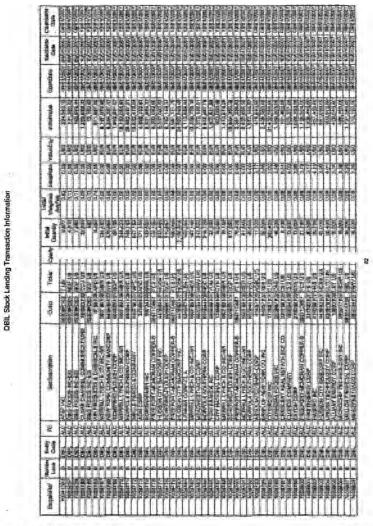


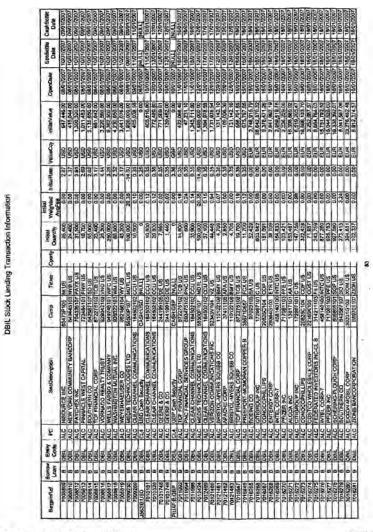


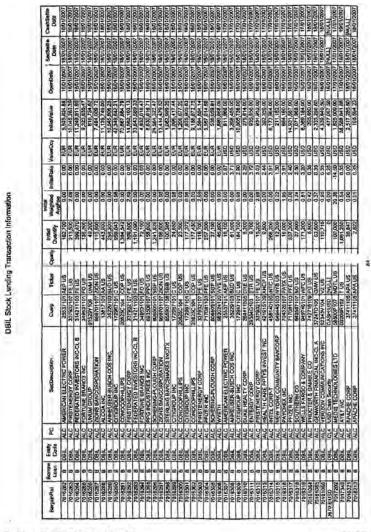
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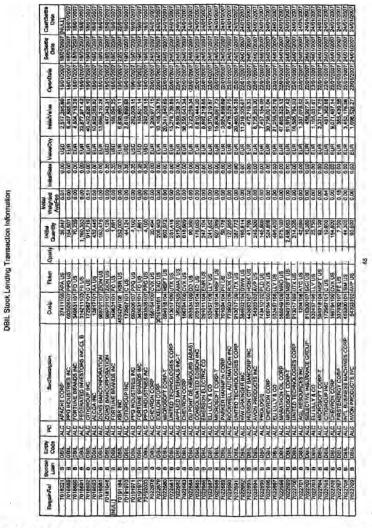


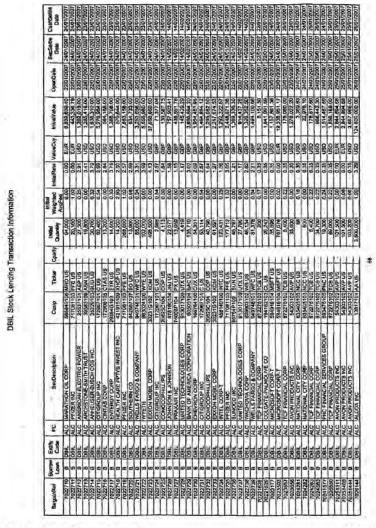


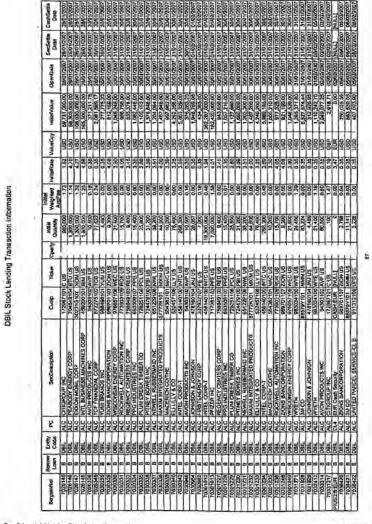


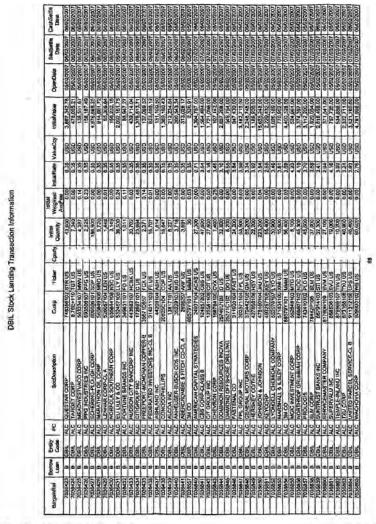


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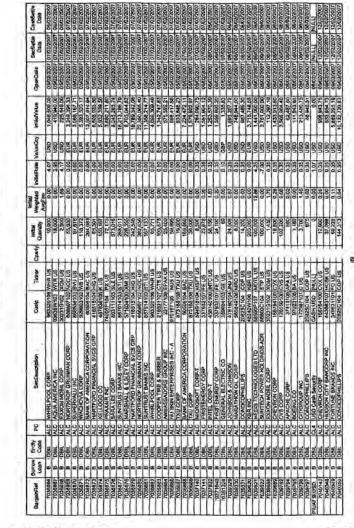




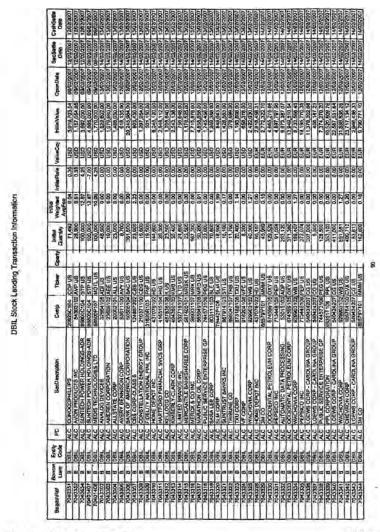


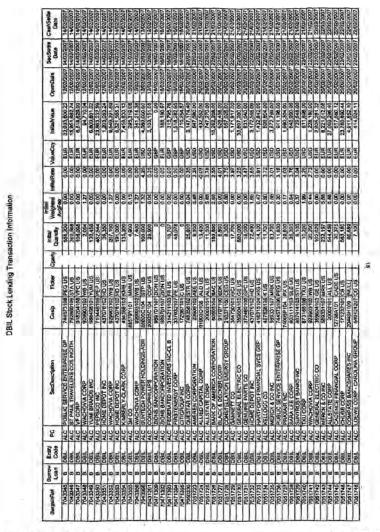


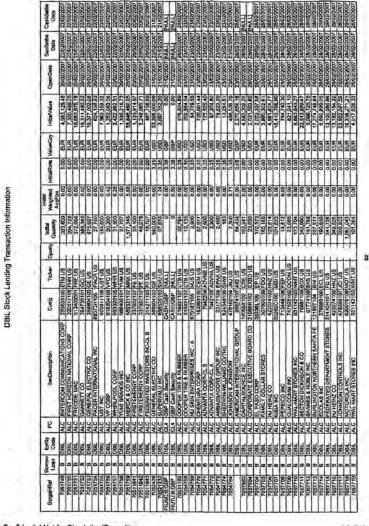
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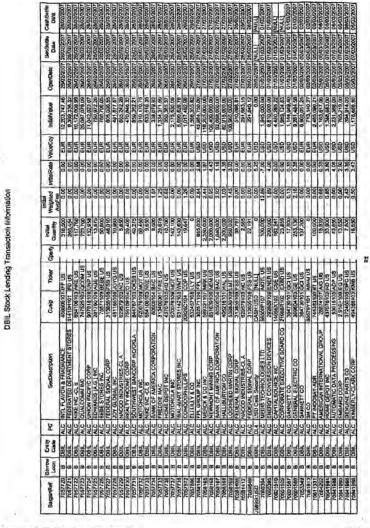


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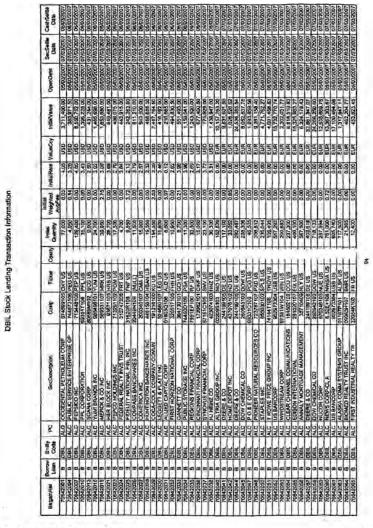




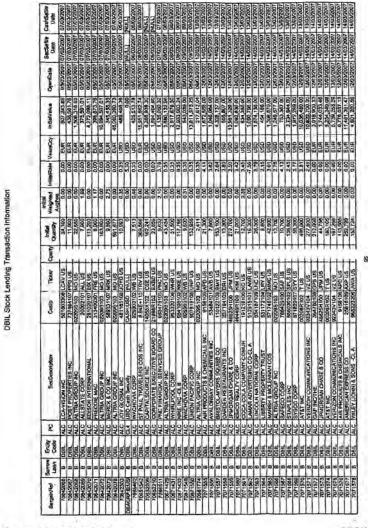


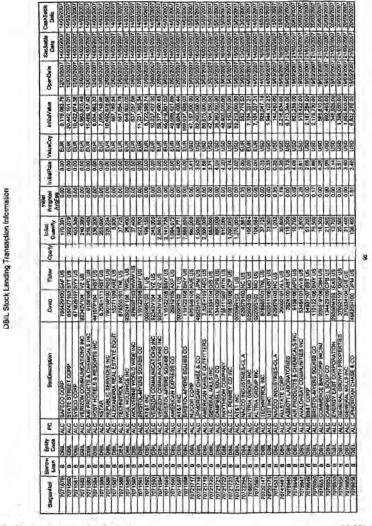


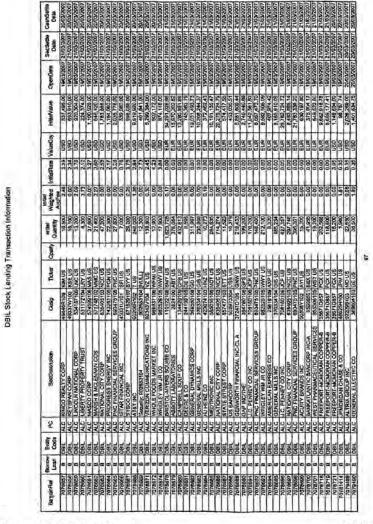
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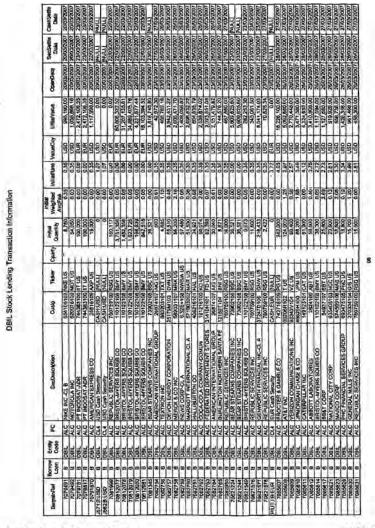


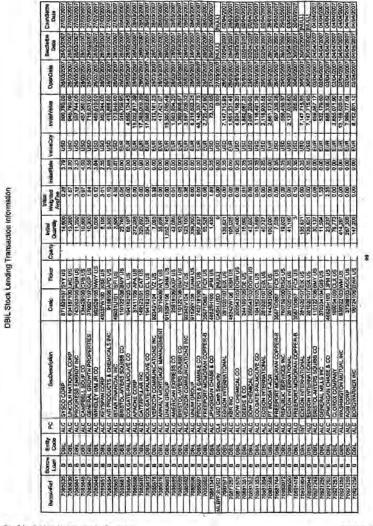
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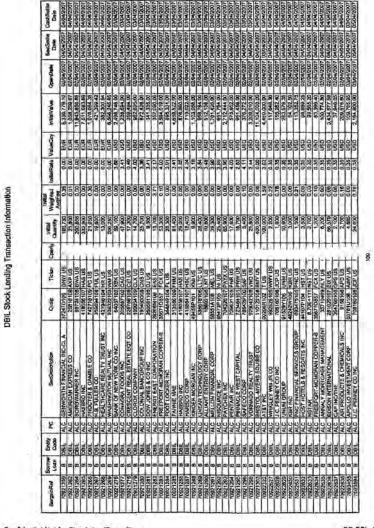


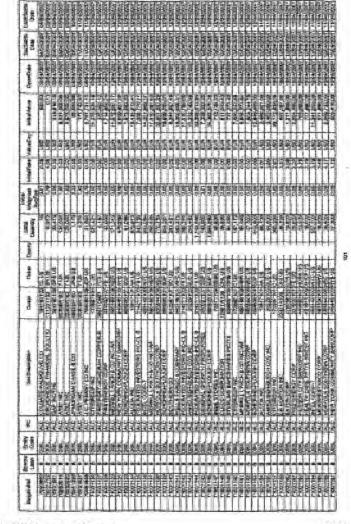




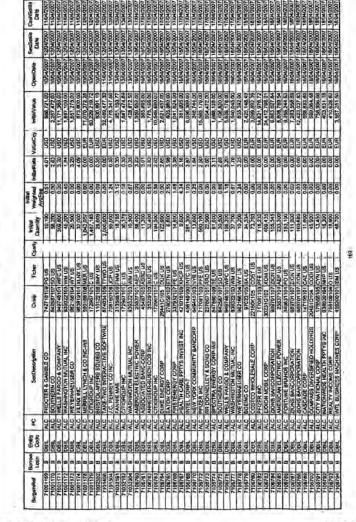




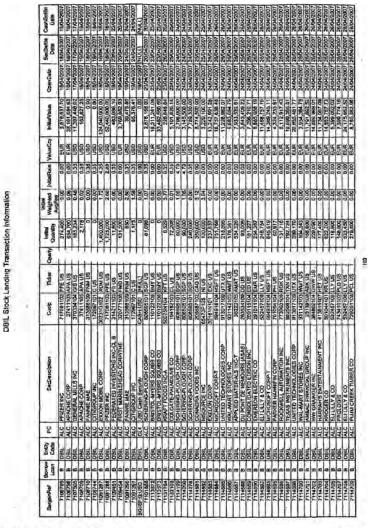


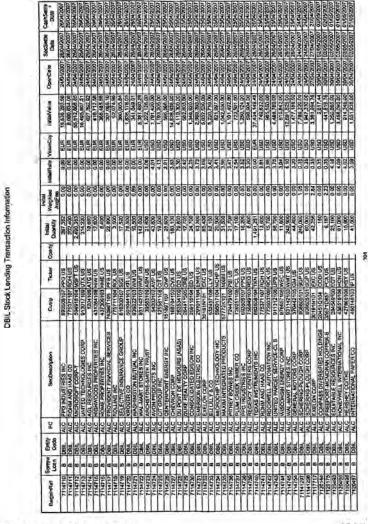


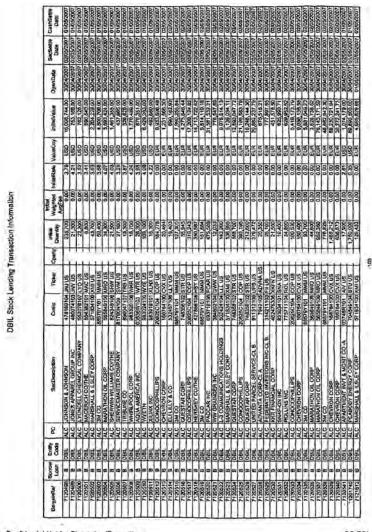
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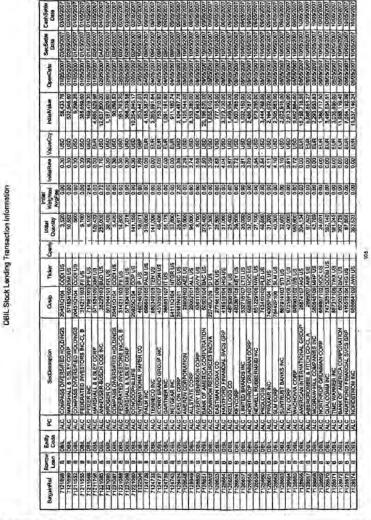


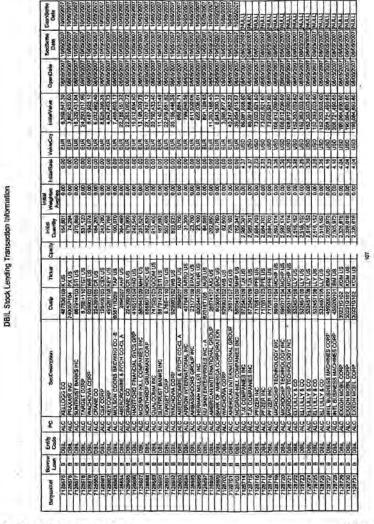
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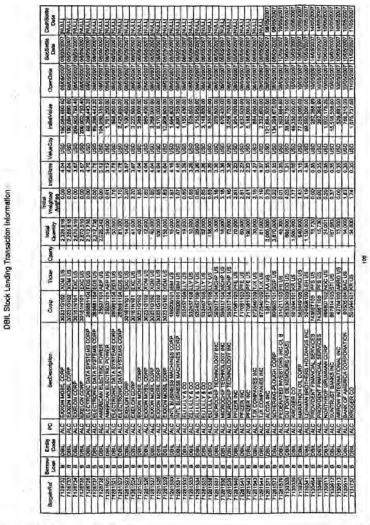


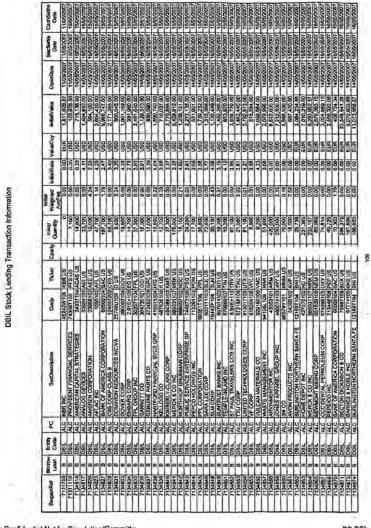


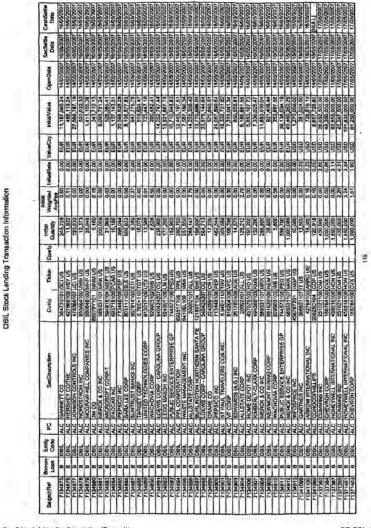


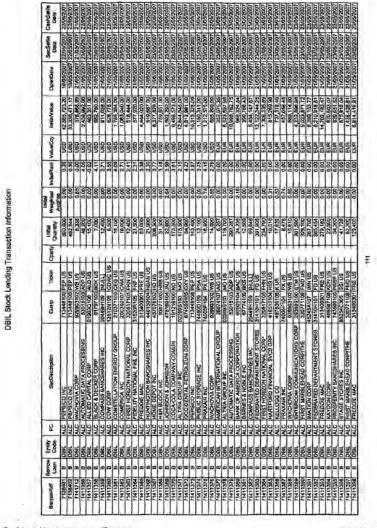


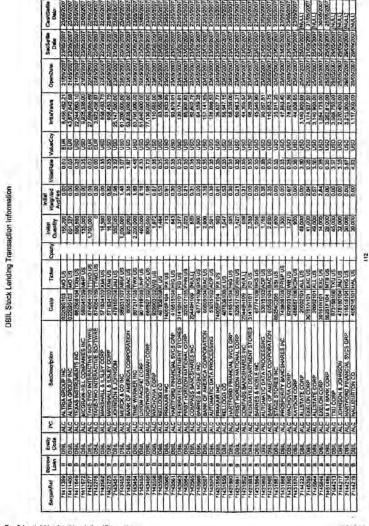


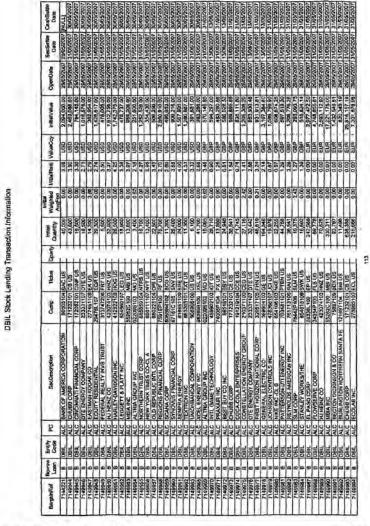




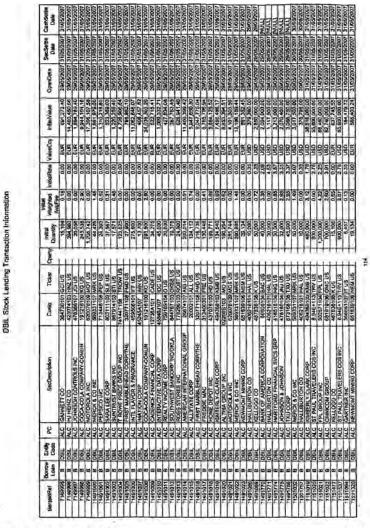




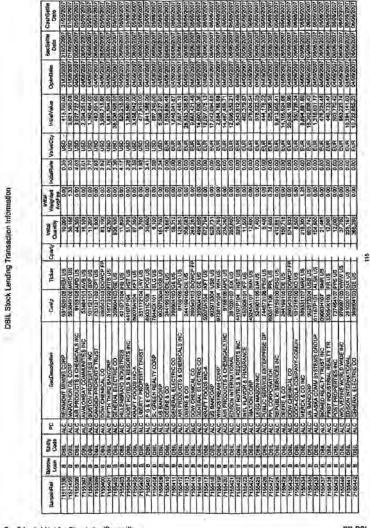


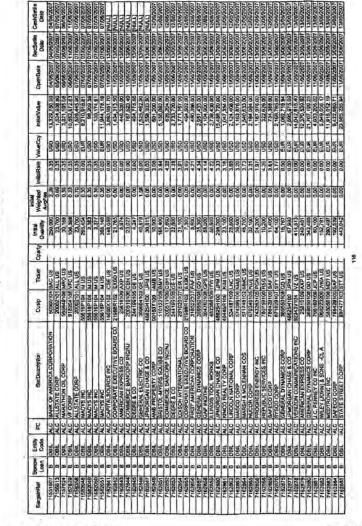


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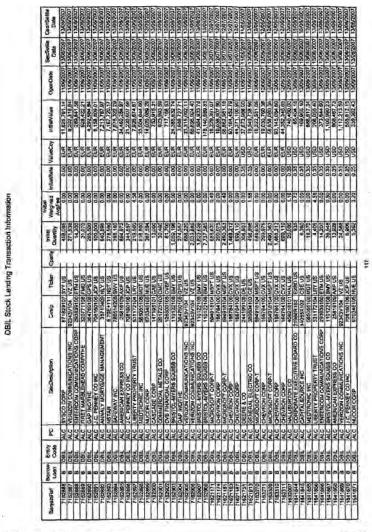


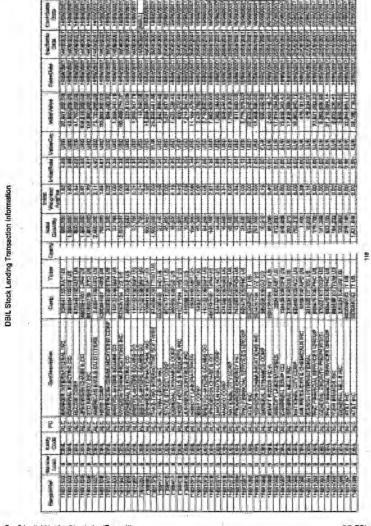
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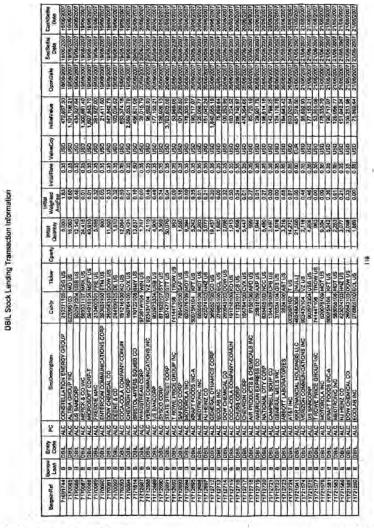


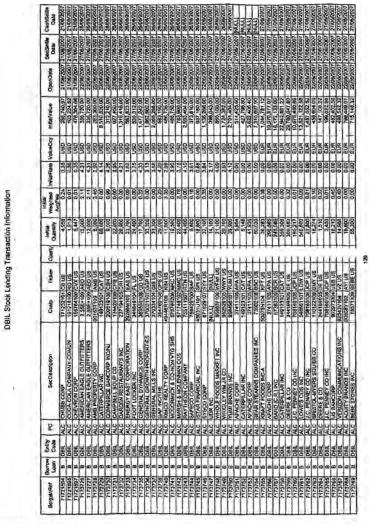


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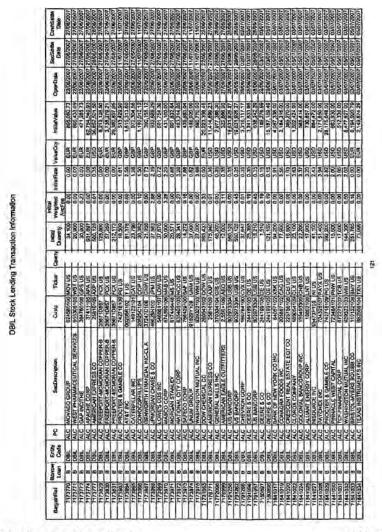




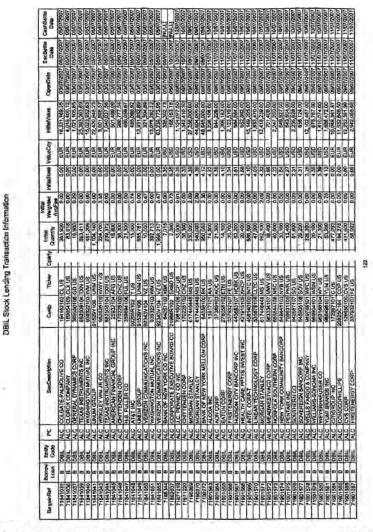




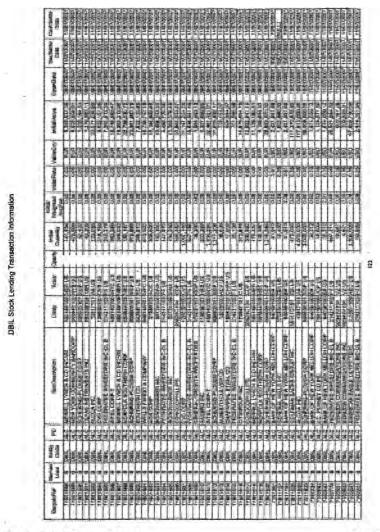
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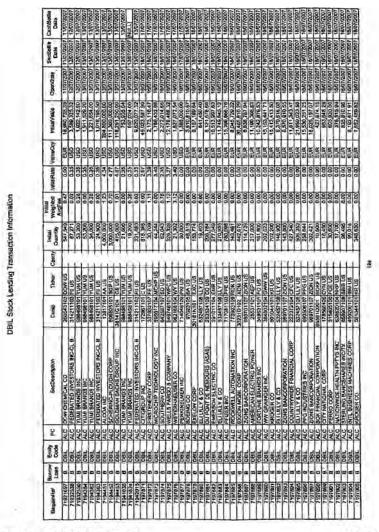
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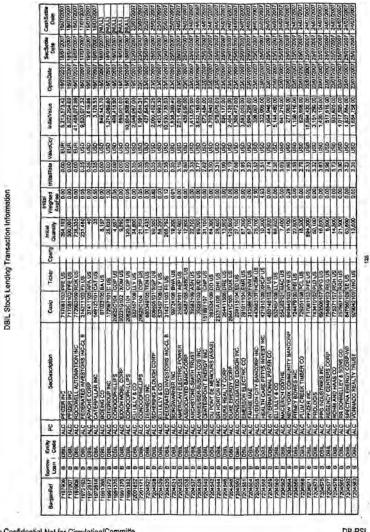


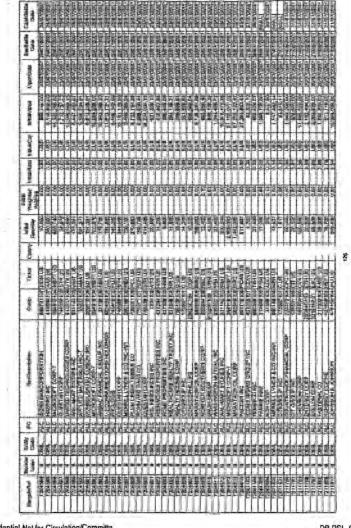
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